

29 September 2021

EU+MS comments on draft Operating Procedures to facilitate remote participation and decision-making in Aarhus MOP-7 and PRTR MOPP-4

Base documents:

ECE/MP.PP/2021/5 (Aarhus)

ECE/MP/PRTR/2021/7 (PRTR)

The EU and its Member States take the following position on the above mentioned documents:

1. Quorum should be established via a roll call, rather than via physical presence in Geneva

Paragraph 10 of both draft Operating Procedures requires physical presence of the Parties' representatives to establish the quorum:

'Subject to the rules governing the holding of meetings at the United Nations Office at Geneva, including as to the number of delegates allowed in the meeting room, each Party is requested to ensure the physical presence in the meeting room of its representative for the purpose of determining a quorum prior to the decision-making, for example, including through representatives of Permanent Missions to the United Nations Office and other international organizations in Geneva.'

Paragraphs 11 and 12 provide further details.

In our view, considering the hybrid nature of the meeting with the possibility for Parties to participate remotely, the quorum should be determined by a roll call. This would allow the presence of all Parties to be considered, including those who are not able or willing to physically travel to Geneva or who cannot ensure that their permanent representatives in Geneva attend the meeting. These considerations apply in the exceptional context of the continued COVID-19 pandemic.

As a precedent of what worked well, we note that such a requirement for physical presence was not included in the Operating Procedures agreed by the Parties to the UNECE Convention on the Transboundary Effects of Industrial Accidents (TEIA) for its COP of December 2020. Instead, a roll call was used to establish the quorum at the COP. To our knowledge this raised no practical and organisational issues at this COP and the meeting went smoothly.

Therefore, the EU and its Member States propose to align paragraphs 10-12 of the draft Operating Procedures to paragraphs 18 to 20 of the Operating Procedures agreed for the before mentioned TEIA COP which read:

'18. In accordance with rule 27, the Conference of the Parties can only make decisions if more than half of the Parties are represented. For meetings with remote participation, representation shall be established through both in-person and remote participation.

19. For Parties represented through remote participation, the Chair shall establish Party presence through the Party representatives' Internet or telephone connection to the virtual meeting platform.

20. A check shall be carried out to ensure that a quorum has been secured at the opening of meetings - specifically before the report on credentials is delivered by one of the Vice-Chairs - and at times of adopting decisions and other official documents, elections and, if required, voting.'

2. Alternative means should be considered to ensure that secret voting is available to all Parties, including those participating remotely

Paragraph 18(b) of the draft Operating Procedures for Aarhus MOP-7 and PRTR MOPP-4 requires physical presence for secret voting:

'In accordance with rule 43 of the Rules of procedure, if a secret ballot is necessary for the elections referred to in rules 18, 22 and 23 of the Rules of procedure due to the absence of consensus, such voting could take place through Party representatives, such as from Permanent Missions to the United Nations Office and other international organizations in Geneva, participating in hybrid meetings in person. Should no presence of Permanent Missions or other Party representatives be granted, and in the case of a predominantly virtual meeting, a short in-person meeting solely for the purpose of conducting a secret ballot can be organized at the United Nations Office at Geneva with the participation of Geneva-based or other Party representatives only.' (emphasis added)

This provision, in practice, will result in a situation where those Parties who are unable to secure physical presence in Geneva are effectively excluded from the possibility to vote, even if they have otherwise fully and actively participated in the meeting via remote participation. This prevents those who are only able to participate remotely from being able to exercise their rights under the Convention.

To remedy this situation, we suggest to explore the possibility to use alternative means to ensure that secret voting can be carried out.

3. Additional provisions regarding failure to indicate 'yes', 'no', or 'abstention' should be amended

Article 18(c) of the draft Operating Procedures for Aarhus MOP-7 and PRTR MOPP-4 provides the following:

'If, for any reason, any Party does not indicate either "yes", "no" or "abstention" during a roll call in accordance with subparagraph (a) (iii) of the present article, or by secret ballot in accordance with subparagraph (b) of the present article, that Party will be considered as being absent from the voting process.'

This provision requires clarification. In particular, the notion of *'being absent from the voting process'* is not clear. Does it mean these Parties will be considered as *'abstaining from voting'*, which is the equivalent of *'not voting'* under Rules 35(3) and (5) of the Rules of procedure of the Aarhus Conventionⁱ and the PRTR Protocol'?

To recall, Article 35(3) of the Rules of Procedure of the Aarhus Convention provides that *'When decisions of the Meeting of the Parties on procedural matters cannot be reached by consensus, their adoption shall require a simple majority vote of the Parties present and voting at the meeting.'* Article 35(5) further provides that *'For the purposes of these rules, "Parties present and voting" means Parties present and casting an affirmative or negative vote. Parties abstaining from voting shall be considered as not voting.'*

If this is the case, the wording *'being absent from the voting process'* should be replaced by *'not voting under Article 35(5) of Decision I/1'*.

A similar amendment should be made to the draft Operating Procedures for PRTR MOPP-4.

Furthermore, considering our concerns and comments with regard to secret voting, we suggest that in draft Operating Procedures, the text *'or by secret ballot in accordance with subparagraph (b) of the present article'* be deleted.

4. The EU+MS reserve their right to submit proposals and comments after the deadline set for the "advance circulation procedure"

The EU and its Member States appreciate efforts made to reach decisions by consensus, including the "advance circulation procedure" described in paragraph 14 of both draft Operating Procedures.

It welcomes that the use of the procedure is not mandatory, but only recommended, which is indicated with the formulation *'procedure, of which Parties should make use in advance of the meetings'* (emphasis added).

The EU and its Member States will make every possible effort to submit to the UNECE Secretariat any proposed revision and comment to the documents circulated ahead of Aarhus MOP-7 and PRTR MOP-4 by the deadline set (i.e. 30 September). However, the fact that the EU and its Member States have to coordinate their position internally and are subject to lengthy formal procedures for the approval of their positions, requires time and might prevent the EU and its Member in some cases to respect the "deadline set". Therefore, the EU and its Member States reserve their right to submit proposals for revisions and comments after 30 September, in full respect of the rules of procedure of the Convention and its Protocol.

Against this background and to avoid any surprises, the EU and its Member States propose the deletion of paragraph 14(c) in both sets of draft Operating Procedures which foresees that *'if no proposed revisions or comments are made by Parties regarding the draft documents circulated for approval by the deadline set, it shall be expected that consensus will be reached on the respective documents during meetings and that these documents will be approved without significant changes.'*

ⁱ Article 35(3) and (5) of Decision I/1 establishing the Aarhus Convention's Rules of Procedure.