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

Twentieth session
(Geneva, 10–13 December 2002)
Item 6 (a) of the provisional agenda

PROGRESS IN CORE ACTIVITIES

Addendum

ELEMENTS FOR A DECISION ON EMISSION DATA REPORTING

Note by the secretariat

Introduction

1. At its twenty-sixth session, the EMEP Steering Body adopted the Guidelines for Estimating and Reporting Emissions Data with a few amendments (EB.AIR/GE.1/2002/7 and Corr.1), and recommended the Executive Body to approve them.
2. The Steering Body also adopted the decision on the legal status of the Guidelines for Estimating and Reporting Emissions Data set out in the annex to its report (EB.AIR/GE.1/2002/2, annex). As part of this decision, it requested the secretariat, in consultation with the Implementation Committee, to prepare elements of a draft decision, for consideration by the Executive Body, to enable the Executive Body to make use of its delegated authorities under article 8 of the Convention, article 8 of the 1991 Geneva Protocol on the Control of Emissions of VOCs and article 5 of the 1994 Oslo Protocol on the Further Reduction of Sulphur Emissions.

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3. The Steering Body recommended the Executive Body to consider adopting the draft decision when acting to approve the Guidelines.

4. A first draft of elements for an Executive Body decision was presented for comment to the Implementation Committee at its tenth meeting in September 2002. At its ninth meeting in May 2002, the Implementation Committee had commented on a draft of the Guidelines and provided some explanation concerning their legal standing. With respect to the legal status of the Guidelines, the Committee highlighted the points presented in chapter I below.

5. The Implementation Committee offered a number of suggestions to the secretariat on the draft Executive Body decision and the text was revised in the light of the suggestions and is presented in chapter II below. The Implementation Committee agreed that it was not appropriate for it to take any position on whether or not the Executive Body should implement any one or more of its delegated authorities under the Convention and its protocols, or whether, if the Executive Body decided to do so, it should do so in the particular manner suggested in the draft. It noted that there were several options for implementing such delegated authorities, only some of which were reflected in the preliminary draft.

I. LEGAL STATUS OF THE EMISSION REPORTING GUIDELINES

6. Legally binding obligations are generally found in treaties themselves, not in guidelines or other decisions adopted outside the treaty. However, a treaty can provide for a guideline or decision to have legally binding effect. Specifically, sometimes a treaty contains a legally binding obligation that refers to guidelines or other decisions of a designated body. The legal obligation derives from the treaty provision, not from the guidelines themselves; at the same time, the guidelines end up having binding effect by virtue of the treaty provision that gives them such effect.

7. The Convention and its protocols contain a number of provisions requiring Parties to follow guidelines or other rules that are not set out in the treaties themselves, but are rather to be decided upon by a designated body, i.e. the Executive Body or the EMEP Steering Body. Should, at any time, the Executive Body or the EMEP Steering Body decide that it wishes to implement one or more of the authorities designated to it, it must do so expressly (such as “for purposes of the timing requirement in article X of Protocol Y, the Executive Body decided...”), so that its intention is clear.

8. With particular reference to reporting requirements, the following provisions of the Convention and the protocols which are in force expressly authorize the Executive Body or the EMEP Steering Body to take decisions with legally binding effect:

(a) **1979 Convention on Long-range Transboundary Air Pollution, article 8 (a) (Exchange of information) and article 10 (Executive Body):** Delegation to the Executive Body in article 8, paragraph (a), concerning data exchange, its periodicity, pollutants to report on, the size of grid units, or the fluxes of agreed pollutants, across national borders, their distances and periodicity; and delegation by the Executive Body to the EMEP Steering Body in article 10, paragraph 3, in particular with regard to data collection and scientific cooperation;

(b) **1991 Geneva Protocol on the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes, article 8 (Information exchange and annual reporting):** Delegation to the Executive Body in article 8, paragraph 1, to specify guidelines for reporting on the level of emissions of VOCs, by total and, to the extent feasible, by sector of origin and by individual VOC; and delegation to the Executive Body in article 8, paragraph 3, to specify reporting intervals and spatial resolution for reporting by Parties within the geographic scope of EMEP of information on VOC emissions by sector of origin, appropriate purposes of modelling the formation and transport of secondary photo-chemical oxidant products, and, in article 8, paragraph 4, referring to a uniform reporting framework;

(c) **1994 Oslo Protocol on Further Reduction of Sulphur Emissions, article 5 (Reporting):** Delegation to the Executive Body in article 5, paragraph 1, to determine the periodic basis for reporting and to adopt a decision on the format and/or content of the information to be included in reports and, also to the Executive Body in article 5, paragraph 1 (b), to adopt guidelines for reporting of national annual sulphur emissions; for reporting by Parties within the geographic scope of EMEP, delegation to the EMEP Steering Body concerning temporal and spatial resolution and to the EMEP Steering Body, subject to approval by the Executive Body, concerning the periodic basis of reporting.

II. POSSIBLE ELEMENTS FOR A DRAFT DECISION BY THE EXECUTIVE BODY

9. The elements of a draft decision presented below, for consideration should it so wish by the Executive Body, would enable the Executive Body to make use of all or any of its delegated authorities under article 8 of the Convention, article 8 of the 1991 Geneva Protocol on the Control of Emissions of VOCs and article 5 of the 1994 Oslo Protocol on the Further Reduction of Sulphur Emissions. The elements drafted are closely based on the contents of the Guidelines.

A. Preamble

The Executive Body,

Referring to the Guidelines for Estimating and Reporting Emissions Data adopted at the twenty-sixth session of the EMEP Steering Body, and approved by the Executive Body at its twentieth session,

Noting the importance of reliable emission data both for the purpose of reviewing Parties' compliance with their obligations under the protocols and as a basis for scientific work to further develop abatement strategies under the Convention,

B. Decision under the Convention

Acting under article 8 (a) of the 1979 Convention on Long-range Transboundary Air Pollution,

1. Agrees that:

(a) The periods of time referred to in article 8 (a) of the 1979 Convention shall be:

- (i) The calendar year for national totals;
- (ii) Every fifth year for gridded data,;

(b) The air pollutants, referred to in article 8 (a) of the 1979 Convention, shall be: sulphur, nitrogen oxides, ammonia, non-methane volatile organic compounds, carbon monoxide, particulate matter, heavy metals (in particular: cadmium, lead, mercury, and if a Party considers it appropriate: arsenic, chromium, copper, nickel, selenium, zinc) and persistent organic pollutants (in particular: aldrin, chlordane, chlordecone, DDT, dieldrin, endrin, heptachlor, hexachlorobenzene (HCB), mirex, toxaphene, hexachlorocyclohexane (HCH), hexabromobiphenyl, polychlorinated biphenyls (PCBs), dioxins/furans, polycyclic aromatic hydrocarbons (PAHs), and if a Party considers it appropriate: short-chained chlorinated paraffins, pentachlorophenol); using as guidance the definition given in annex I to the above-mentioned Guidelines for Estimating and Reporting Emissions Data, noting that no revision to the Guidelines will affect this decision unless and until it has been expressly so decided by the Executive Body;

(c) The grid units, referred to in article 8 (a) of the 1979 Convention, for the reporting by Parties within the geographic scope of EMEP, shall be the 50 km x 50 km grid specified in annex V to the above-mentioned Guidelines for Estimating and Reporting Emissions Data, noting that no revision to the Guidelines will affect this decision unless and until it has been expressly so decided by the Executive Body;

C. Decision under the 1991 VOC Protocol

Acting under article 8 of the 1991 Geneva Protocol on the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes,

2. Specifies that:

(a) The guidelines, referred to in article 8, paragraph 1, of the 1991 VOC Protocol, according to which each Party shall report on the level of emissions of VOCs in its territory and any TOMA in its territory, by total and, to the extent feasible, by sector of origin and by individual VOC, shall be the above-mentioned Guidelines for Estimating and Reporting Emissions Data, noting that no revision to the Guidelines will affect this specification unless and until it has been expressly so decided by the Executive Body;

(b) The intervals, referred to in article 8, paragraph 3, of the 1991 VOC Protocol, for which Parties within the geographic scope of EMEP shall report information on VOC emissions by sector of origin, shall be annual;

(c) The spatial resolution, referred to in article 8, paragraph 3, of the 1991 VOC Protocol, with which Parties within the geographic scope of EMEP shall report information on VOC emissions, shall be the 50 km by 50 km grid specified in annex V to the above-mentioned Guidelines for Estimating and Reporting Emissions Data, noting that no revision to the Guidelines will affect this specification unless and until it has been expressly so decided by the Executive Body;

(d) The uniform reporting framework, referred to in article 8, paragraph 4, of the 1991 VOC Protocol, in accordance with which information shall, as far as possible, be submitted, shall be the reporting formats given in annex IV of the above-mentioned Guidelines for Estimating and Reporting Emissions Data, noting that no revision to the Guidelines will affect this specification unless and until it has been expressly so decided by the Executive Body;

D. Decision under the 1994 Sulphur Protocol

Acting under article 5 of the 1994 Oslo Protocol on Further Reduction of Sulphur Emissions,

3. Determines that the periodic basis, referred to in article 5, paragraph 1, of the 1994 Oslo Protocol, on which each Party shall report information on the levels of national annual sulphur emissions referred to in subparagraph (b), shall be annual and that submissions [should][shall]¹ reach the secretariat before 15 February, for data other than gridded data, on inventories for the calendar year that ended 13 months prior to that date and, if necessary, for updates to data for earlier years and to the emission projections;

4. Specifies that the guidelines referred to in article 5, paragraph 1 (b), of the 1994 Oslo Protocol, shall be the Guidelines for Estimating and Reporting Emissions Data, noting that no revision to the Guidelines will affect this specification unless and until it has been expressly so decided by the Executive Body;

5. Approves the decision by the EMEP Steering Body that the periodic basis, determined in accordance with article 5, paragraph 2, of the 1994 Oslo Protocol for the reporting by Parties within the geographic scope of EMEP:

(a) Shall be annual and that submissions should reach the secretariat before 15 February, for data other than gridded data, on inventories for the calendar year that ended 13 months prior to that date and, if necessary, for updates to data for earlier years and to the emission projections; and

(b) Shall be every fifth year (2000, 2005, etc.) and that gridded data should reach the secretariat no later than 1 March.

¹ Among other observations, the Committee considered the use of the word “should” in the first draft and concluded that it would not have the effect of making the deadlines specified legally binding.