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

Steering Body to the Cooperative Programme for Monitoring and Evaluation  
of the Long-range Transmission of Air Pollutants in Europe (EMEP)  
(Twenty-sixth session, Geneva, 4-6 September 2002)  
(Item 5 (f) of the provisional agenda)

**LEGAL STATUS OF THE GUIDELINES FOR  
ESTIMATING AND REPORTING EMISSIONS DATA**

Note by the secretariat

**Introduction**

1. At the request of the EMEP Steering Body, the Task Force on Emission Inventories and Projections revised the draft guidelines for estimating and reporting emissions data under the Convention. A new draft is presented to the Steering Body in document EB.AIR/GE.1/2002/7. As the Task Force was unclear about the legal status of the guidelines, it sought advice from the Implementation Committee. The Implementation Committee, at its ninth meeting (6-8 May 2002, Stockholm), considered the draft guidelines for estimating and reporting emissions data.
2. The objective of this document is to present to the Steering Body the aspects highlighted by the Implementation Committee concerning the legal status of the guidelines. It also offers to the Steering Body a draft decision that it may adopt if it wishes to make use of the legal authority delegated to it by the 1994 Oslo Protocol and if it wishes to propose similar steps to the Executive Body.

Documents prepared under the auspices or at the request of the Executive Body for the Convention on Long-range Transboundary Air Pollution for GENERAL circulation should be considered provisional unless APPROVED by the Executive Body.

3. The Implementation Committee reviewed the wording of the guidelines in detail and proposed a number of legal modifications that have been included in the draft presented to the Steering Body. With respect to the legal status of the guidelines, the Committee highlighted the following points:

(a) 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;

(b) 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;

(c) 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:

(i) **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;

(ii) **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;

- (iii) **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.

4. Noting the discussions of the Implementation Committee at its ninth meeting, the secretariat has prepared a draft decision on the legal status of the guidelines for consideration by the Steering Body (see annex). The draft decision, if adopted, would make the relevant provisions of the guidelines legally binding for Parties to the 1994 Oslo Protocol within the geographic scope of EMEP. In the decision the secretariat is also requested to prepare a similar draft decision for consideration by the Executive Body at its twentieth session and the Executive Body is recommended to consider adopting such a decision when it considers the guidelines.

**Annex**

**DRAFT DECISION ON THE LEGAL STATUS OF THE GUIDELINES FOR  
ESTIMATING AND REPORTING EMISSIONS DATA**

The EMEP Steering Body,

Referring to the Guidelines for Estimating and Reporting Emissions data that it adopted at its twenty-sixth session,

Acting under article 5, paragraph 2, of the 1994 Oslo Protocol on Further Reduction of Sulphur Emissions,

1. Determines the periodic basis referred to in article 5, paragraph 2, of the 1994 Oslo Protocol for the reporting by Parties within the geographic scope of EMEP to be that given in paragraph 37 of the Guidelines;
2. Invites the Parties to the 1994 Oslo Protocol at a session of the Executive Body to approve the above decision on the periodic basis, in accordance with article 5, paragraph 2, of the 1994 Oslo Protocol;
3. Specifies the temporal resolution referred to in article 5, paragraph 2, of the 1994 Oslo Protocol for the reporting by Parties within the geographic scope of EMEP to be that given in paragraph 21 of the Guidelines;
4. Also specifies the spatial resolution referred to in article 5, paragraph 2, of the 1994 Oslo Protocol for the reporting by Parties within the geographic scope of EMEP to be that given in paragraph 22 of, and annex V to, the Guidelines;
5. Requests the secretariat, in consultation with the Implementation Committee, to prepare a draft decision, for consideration by the Executive Body, that would 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;
6. Recommends the Executive Body to consider adopting the draft decision referred to in paragraph 5 above when acting to approve the Guidelines.