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**ECONOMIC COMMISSION FOR EUROPE**

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

Twenty-fourth session  
Geneva, 11–14 December 2006  
Item 8 of the provisional agenda

**POSSIBILITIES FOR OPENING THE CONVENTION**

Note by the Bureau in consultation with the secretariat

1. The Executive Body at its twenty-third session considered an informal document that proposed opening up the Convention to enable accession by countries outside the UNECE region. A number of Parties expressed support for the idea; others were concerned about the practical and legal implications. The Executive Body invited its Bureau to consider the issue of opening the Convention and to provide information on the legal and practical aspects of this issue to its twenty-fourth session.

2. The Bureau has considered the matter at its meetings in 2006, taking advice from the secretariat and from Mr C. Lindemann (Germany), a legal expert who is a member of the Implementation Committee. This note reflects the deliberations of the Bureau and the information provided to it.

## **I. CURRENT ELIGIBILITY FOR ACCESSION TO THE CONVENTION AND ITS PROTOCOLS**

3. The Convention and its eight protocols are presently open to the member States of the United Nations Economic Commission for Europe as well as States having consultative status with UNECE, pursuant to paragraph 8 of Economic and Social Council resolution 36 (IV) of 28 March 1947, and to regional economic integration organizations which fulfil certain requirements. This position is captured in almost identical terms in the articles on signature, ratification, acceptance, approval and accession of the Convention and its protocols.

4. It follows that opening the Convention to non-UNECE member States would require a formal amendment to the Convention text. This is discussed in detail in section II below.

5. In addition, in order to become a Party to a protocol to the Convention, a State or organization has to be a Party to the Convention; this is set out in the articles on signature and ratification in the protocols. This requirement implies that the Convention is also open to any State eligible for accession to a protocol. This is consistent with the Convention being a framework for its subsequent protocols. While such linking provisions could be deleted by amendment, the many other links between the protocols and the Convention would make this difficult in practice, so the option of removing links between the Convention and protocols is not considered further.

6. Because of these links between the instruments, opening both the Convention and some or all of its protocols to non-UNECE member States would require a formal amendment of the relevant provisions in the Convention as well as in the protocols concerned. Such amendments would have to fulfil the requirements for amendments in all the instruments to be opened. There seems to be no possibility for an “omnibus” amendment (i.e. one change in one provision of the Convention) that could open the Convention and all protocols, since these are separate legal instruments.

## **II. LEGAL ASPECTS OF OPENING THE CONVENTION AND ITS PROTOCOLS**

7. The procedures for amending the Convention and the provisions of the main body (as opposed to the annexes) of the protocols are in essence identical. The relevant provision of the Convention (article 12), for example, reads as follows:

*(a) Any Contracting Party may propose amendments to the present Convention.*

*(b) The text of proposed amendments shall be submitted in writing to the Executive Secretary of the Economic Commission for Europe, who shall communicate them to all Contracting Parties. The Executive Body shall discuss proposed amendments at its next annual*

*meeting provided that such proposals have been circulated by the Executive Secretary of the Economic Commission for Europe to the Contracting Parties at least ninety days in advance.*

*(c) An amendment to the present Convention shall be adopted by consensus of the representatives of the Contracting Parties, and shall enter into force for the Contracting Parties which have accepted it on the ninetieth day after the date on which two-thirds of the Contracting Parties have deposited their instruments of acceptance with the depositary. Thereafter, the amendment shall enter into force for any other Contracting Party on the ninetieth day after the date on which that Contracting Party deposits its instrument of acceptance of the amendment.*

8. An amendment to open up the Convention or its protocols requires essentially a consensus decision at a session of the Executive Body and ratification by at least two thirds of the Contracting Parties of the instrument in question. Following the normal amendment procedure could, however, result in a split regime; if not all Parties to the instrument in question have ratified the amendment, a situation could arise in which two thirds of the Parties were Parties to a treaty open to non-UNECE member States, while the other Parties remained Parties to the original treaty.

9. The above situation has been addressed by other UNECE conventions and their associated protocols. The paragraphs below provide some details.

10. The Parties to the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) decided in 2001 to amend article 17 of that Convention to allow UN member States which are not member States of the UNECE to accede to the Convention. The new paragraph 3 of article 17 reads as follows:

*Any other State, not referred to in paragraph 2 of this Article, that is a Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties. The Meeting of the Parties shall not consider or approve any request for accession by such a State until this paragraph has entered into force for all the States and organizations that were Parties to the Convention on 27 February 2001.*

To date, five Parties to the Espoo Convention have ratified this amendment: Germany in 2002, Luxemburg in 2003, Poland in 2004 and Sweden and Albania in 2006. Entry into force of the amendment requires ratification by three fourths of the number of Parties at the time of the adoption of the amendment. However, the second sentence of the new paragraph 3 of article 17 contains an even stricter requirement for the effective application of this provision (“all States and organizations”).

11. The Protocol on Strategic Environmental Assessment to the Espoo Convention allows any non-UNECE member State that is a Member of the United Nations to accede to the Protocol upon approval by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol.

12. As the above-mentioned Espoo Convention amendment and the Protocol on Strategic Environmental Assessment have not entered into force, no accession by non-UNECE member States has been possible so far.

13. The Parties to the Convention on the Protection and Use of Transboundary Watercourses and International Lakes decided in 2003 to amend article 25 of that Convention to allow UN member States, which are not member States of UNECE, to accede to the Convention. The new paragraph 3 of article 25 reads as follows:

*Any other State not referred to in paragraph 2, that is a Member of the United Nations may accede to the Convention upon approval by the Meeting of the Parties. In its instrument of accession, such a state shall make a declaration stating that approval for its accession to the Convention had been obtained from the Meeting of the Parties and shall specify the date on which approval was received. Any such request for accession by Members of the United Nations shall not be considered for approval by the Meeting until this paragraph has entered into force for all the States and organizations that were Parties to the Convention on 28 November 2003.*

At the time of writing, six Parties to the Water Convention have ratified this amendment: Sweden in 2004, Poland and Hungary in 2005 and Luxembourg, the Netherlands and Romania in 2006. Entry into force of the amendment requires ratification by two thirds of the Parties at the time of the adoption of the amendment (23 Parties). The third sentence of the new paragraph 3 of article 25 contains an even stricter requirement for the effective application of this provision (“all States and organizations”).

14. The Protocol on Civil Liability and Compensation for Damage Caused by the Transboundary Effects of Industrial Accidents on Transboundary Waters allows any non-UNECE member State that is a Member of the United Nations to accede to the Protocol upon approval by the Meeting of the Parties to the Convention.

15. The Protocol on Water and Health does not contain a provision opening it up to non-UNECE member States. The Protocol is, however, also open to members of the World Health Organization’s Regional Committee for Europe.

16. The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) provides that Members of the United Nations may accede to the Convention upon approval by the Meeting of the Parties. This Convention’s Protocol on Pollutant Release and Transfer Registers, which has not yet entered into force, was open for signature and is open for accession by all UN member States without the approval of the Meeting of the Parties. So far, no non-UNECE member State has signed or acceded to these instruments.

17. Experience with the Convention amendments suggests that the ratification process is rather slow though the amendments themselves are relatively recent. Predictions about future

ratifications and the possible date by which all relevant parties will have ratified are difficult. Perhaps more significantly, it seems that those instruments already open to non-UNECE member States have not yet attracted any such signatory or party.

18. One question to consider from a political perspective could be whether an amendment to open up the Convention on Long-range Transboundary Air Pollution and perhaps its protocols might result in a rather slow process of entry into force. This might not send a positive signal to potentially interested non-UNECE member States.

19. If it were decided to open just one protocol for accession by non-UNECE member States – for example, as a test case – then the Convention would probably have to be amended too. The articles on signature and ratification in the protocols require participating States to be Parties to the Convention, which in turn requires the Convention to be opened for accession by such a Party. Although one could delete that requirement from a protocol, there are still so many links between the protocols and the Convention that it would be difficult to imagine to transforming any existing protocol into a stand-alone instrument.

20. If there were an intention to amend the Convention and all or many protocols, it could be useful to treat all amendments as a package. This approach might facilitate negotiations, and Parties could send the package through whatever national procedures are necessary to prepare for ratification. Such an approach could help to avoid a situation where some Parties ratify some but not all of the amendments.

### **III. PRACTICAL ASPECTS OF OPENING THE CONVENTION AND ITS PROTOCOLS**

21. Some practical aspects of opening the legal instruments (e.g. the time taken to achieve entry into force of amendments) have been highlighted above. There may be other practical problems to overcome, for example, those relating to technical issues associated with the protocols. The Convention itself indicates the Parties' broad intention to control and reduce air pollution, and it provides a general framework for further detailed agreements. The Convention text may not present technical obstacles, but individual protocols could present a much bigger challenge.

22. Early "flat rate" protocols on sulphur and nitrogen might be applied to any country in the world, but current thinking under the Convention has tended towards effects-based approaches, and here there are practical difficulties. The Convention's effects-based calculations that provide the basis for emission targets have relied upon integrated assessment models and data on emission levels, abatement costs and impacts (mainly based upon critical loads). Such data might not be readily available for regions outside UNECE. Furthermore, appropriate

atmospheric models describing the movement of pollutants, which have provided the Convention's integrated assessment models with country-to-country transfer matrices, might not be available. Even if models and data were available, a considerable amount of work would be required to develop the necessary tools to run the models.

23. There may be further scientific challenges. Critical loads for ecosystems in other climates may be very different from those in Europe and North America and may require new approaches for their calculation; experts in Asia have already highlighted this problem. In addition, emission control options might need to be reconsidered for countries outside of Europe and North America, since industrial methods and cultural practices (e.g. cooking) may be very different.

24. Even addressing all of the data and modelling requirements may not provide an effective solution. It could be questioned whether developing detailed transboundary strategies for an individual country is valid, especially if that country is surrounded by others that are not party to any such agreement. The strength of the Convention in Europe is that, since many countries are Parties to the protocols, implementation of the protocol provisions by a large majority ensures that benefits are enjoyed by most countries. This would not be the case for a few countries in other regions of the world.

25. Another practical aspect to be considered is the issue of language and translation. The Convention, as a UNECE instrument, uses the three official languages of the region. Other regions of the United Nations have other combinations of the six official UN languages. If the Convention were opened up to other regions, the Executive Body would need to consider whether documents and/or meetings should also use Arabic, Chinese or Spanish.

26. Should the Executive Body decide to embark upon amending the Convention and possibly some protocols to enable accession by non-UNECE member States, it may consider coordinating this undertaking as a "package" of amendments to simplify and speed the process of ratification.

27. Finally, the Executive Body would need to consider its policy of encouraging participation by countries with economies in transition. At present, the Executive Body decides upon a list of UNECE countries with economies in transition that are eligible for funding to attend meetings in Geneva. Support is provided from a trust fund of voluntary contributions from Parties. Lead countries are also encouraged to fund experts from the listed countries at workshops and meetings of expert groups and task forces. If non-UNECE countries with economies in transition became Parties to the Convention, the Executive Body would need to decide whether to support their participation in the work of the Convention.

#### IV. OPTIONS FOR FURTHER CONSIDERATION

28. The reflections above may seem to emphasize the practical difficulties involved in amending the Convention and its protocols in order to open them to non-UNECE member States. However, the Executive Body may decide that there are important political reasons to propose such amendments (e.g. harmonization with other UNECE Conventions, or the value of opening regional regimes as a political gesture), and these may override any concerns.

29. Therefore, taking account of the legal and practical aspects of the issue of opening the Convention and its protocols, the Bureau invites the Executive Body to consider the following options:

(a) Make renewed efforts to attract participation from non-UNECE delegations and experts at meetings under the Convention, especially on issues such as hemispheric transport of air pollution. Develop further and extend outreach activities to regions that are developing their own agreements on air pollution, including consideration of the possibilities for inter-regional collaboration, through, for example, memorandums of understanding or special events/seminars for non-UNECE countries;

(b) Negotiate a revision to the Convention to allow non-UNECE countries to accede to it. Negotiations would need to consider the approaches used by other UNECE conventions and protocols as well as any additional options that Parties may propose. Such negotiations would not exclude consideration of opening one or more of the protocols in the future;

(c) Concurrently negotiate revisions to the Convention and to a selected number of protocols, where practical, along the lines proposed in (b).

(d) In addition to undertaking one or more of the actions outlined in (a)–(c), agree to consider the issue of opening the Convention to non-UNECE member States in any negotiations on new protocols.

30. The Executive Body may wish to consider a mechanism for developing the policy aspects of any action it may take. For example, a “policy paper” could be developed to outline how the Convention might encourage participation of non-UNECE countries, bearing in mind the points made above.