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**ECONOMIC COMMISSION FOR EUROPE**

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

Working Group on Strategies and Review

Forty-first session  
Geneva, 14–17 April 2008  
Item 5 of the provisional agenda

**STRENGTHENING THE DRAFT REVISED EMISSION REPORTING GUIDELINES**

Report by the Chair of the Group of Legal Experts

1. At its fortieth session, the Working Group on Strategies and Review took note of the conclusions of its ad hoc Group of Legal Experts on the Legal Standing of the Emission Reporting Guidelines (ECE/EB.AIR/WG.5/2007/16). Reiterating the importance of improving the quality and comparability of the emission data reported, the Working Group mandated the Group of Legal Experts, in consultation with the Co-Chairs of the Task Force on Emission Inventories and Projections, to further explore the possibilities for strengthening the draft revised Guidelines for Reporting Emissions and to present the outcomes of this work to the Working Group at its forty-first session<sup>1</sup>. On the basis of the work of the legal experts, the Working Group is expected to report its conclusions to the twenty-sixth session of the Executive Body in 2008 so that the draft revised Guidelines might be adopted at that time.

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<sup>1</sup> Document ECE/EB.AIR/WG.5/88, para. 52 (a)–(c).

2. The present report summarizes the main conclusions of the Group of Legal Experts and contains in its annex possible draft decisions that might be forwarded by the Working Group to the Executive Body for its consideration. The revised draft Guidelines, as amended by the Group, are presented in document ECE/EB.AIR/WG.5/2008/6.

3. The Group of Legal Experts met in Geneva on 15 and 16 January 2008. Mr. P. Drost (the Netherlands) chaired the meeting, which was attended by legal experts Ms. C. Hamilton (United Kingdom) and Mr. P. Hallström (Sweden); the Co-Chair of the Task Force on Emission Inventories and Projections Ms. K. Rypdal (Norway) and Mr. M. Adams, representing the other Co-Chair, Ms A. Mourelatou (European Environment Agency). Technical experts Mr. E. Dame (European Commission), Ms. M. Khanna (United States) and Mr. J. Sliggers (the Netherlands) also attended. The UNECE secretariat was also present. Legal experts Mr. J. Klein (United States) and Ms A. Beaudoin (Canada) as well as Mr. M. Deslauriers (technical expert, Canada) took part in the meeting on 16 January by means of a telephone conference call. Following the meeting, the Group of Legal Experts communicated by e-mail to finalize the documents.

4. In line with its mandate, consisting of three main tasks, the Group of Legal Experts:

(a) Explored further all possibilities under the already existing enabling clauses in the Convention and its protocols to give legally binding effect to the draft revised Guidelines or parts of them for Parties to these instruments;

(b) Drafted possible decisions which the Working Group could recommend to the Executive Body for adoption at its twenty-sixth session;

(c) Elaborated further on possibilities to simplify the language used in the draft Guidelines, both to strengthen it and make it more concise and explicit.

5. In addition to the above, the Group of Legal Experts identified a number of policy issues for consideration by the Working Group (see chapter III below).

#### **I. ENABLING CLAUSES FOR POSSIBLE DECISIONS OF THE EXECUTIVE BODY**

6. The Group of Legal Experts reiterated its general conclusion (ECE/EB.AIR/WG.5/2007/16, chapter I) that the Guidelines are a useful policy tool that provide practical guidance to Parties but do not create legal obligations as such. Moreover, the Executive Body did not have the authority to give the Guidelines legally binding effect in their entirety.

7. However, certain elements or parts of the Guidelines could be made legally binding to Parties, but only by virtue of specific treaty provisions (enabling clauses) giving them such effect. In other words, the legal obligations could only derive from and have their basis on treaty provisions. Annex II to document ECE/EB.AIR/WG.5/2007/16 provided an overview of the relevant authority of the Executive Body based upon the current text of the Convention and the protocols. Executive Body decisions 2002/10 and 2005/1 illustrate instances where the Executive Body has utilized its authority in accordance with the existing enabling clauses. In line with its mandate, the Ad hoc Group proposed possible further decisions which the Working Group could recommend to the Executive Body for adoption at its twenty-sixth session (see parts A – D of the draft decision annexed to the present document).

8. Should the Working Group wish to create more legally binding reporting obligations for Parties, it would need to propose amendments to the relevant provisions in the Convention and its protocols.

9. The Group identified the following elements in the Guidelines which the Executive Body could render legally binding to the Parties, through the adoption of an explicit decision, should it deem this necessary. It also specified the provisions (enabling clauses) in the Convention or the protocols which provided the basis for the possible decisions, as follows:

(a) Article 8, paragraph 2, of the 1988 Protocol on Nitrogen Oxides (NO<sub>x</sub>), and article 8, paragraph 4, of the 1991 Protocol on Volatile Organic Compounds (VOCs) provide that information on reporting under these Protocols shall, as far as possible, be submitted in accordance with a “uniform reporting framework”. The Group recommended a possible decision of the Executive Body to specify that this uniform reporting framework refers to the “reporting framework as set out in the Guidelines”. Under the Protocol on VOCs this (implicit) authority of the Executive Body was already utilized in decision 2002/10. Therefore, a new decision of the Executive Body would be needed only to clarify that the reference to the “Guidelines, as approved by the Executive Body at its twentieth session” contained in decision 2002/10, now applies to the revised Guidelines. A similar update would also be necessary regarding the Convention and the 1994 Sulphur Protocol (see part A of the draft decision). Under the Protocol on NO<sub>x</sub> the authority of the Executive Body has not been used so far, a draft decision to this effect was therefore required (see part B of the draft decision).

(b) Article 5, paragraph 1, of the 1994 Sulphur Protocol allows its Parties to specify guidelines for annual reporting and the format and content of certain reporting. The Group drafted a possible decision that contains such specifications (see part C of the draft decision).

(c) In the chapter V on reporting guidance for five-yearly reporting, paragraph 34 of the draft revised Guidelines specifies that Parties shall provide any updated projections annually by 15 February for the years 2010, 2015, 2020, 2030 and 2050. Currently, however, there is no obligation for Parties to provide updated projections for the years 2030 and 2050. Paragraph 1 of decision 2005/1 refers only to the years 2010, 2015 and 2020. Therefore, the Group concluded that a new decision based upon 2005/1 but including also the years 2030 and 2050 was needed. The Group noted that the reference to ‘(every fifth year)’ in decision 2005/1 was not entirely clear to it.

10. The Group debated at some length whether the protocols, or some of them, would allow the Executive Body to decide that Parties shall submit an Informative Inventory Report (IIR). Although the Group agreed that, from a technical and policy point of view, an obligation to submit IIRs would be highly desirable, the legal experts stressed that from a legal point of view this was possible only on the basis of specific provisions (enabling clauses) in the protocols, which gave the Executive Body this authority. Currently, the protocols do not mention explicitly the concept of an IIR but use other terminology, such as: “reporting of information in conformity with a decision regarding ‘format and content’ to be adopted by Parties at a session of the Executive Body” (see, for example, art. 7, para. 2, of the Protocol on Heavy Metals) and “collecting and reporting information taking into account the guidance on the “methodologies of the Steering Body of EMEP<sup>2</sup> and the Executive Body” (for example, in art. 7, para. 1(b) of the Protocol on Heavy Metals). For the time being, the Group was unable to reach consensus on the interpretation of this terminology, in such a way that the “format and content” or “methodology” for reporting to be decided upon by the Executive Body would imply IIRs, with an additional condition that the content of the IIR does not go beyond them. Consequently, the Group concluded that the Executive Body did not have the authority to adopt decisions with legally binding effect on the IIR-related issues and that in the paragraph 10 of the draft revised Guidelines, the verb “should” is the appropriate one. However, in line with its previous conclusions (ECE/EB.AIR/WG.5/2007/16, para. 12) the Group stressed that the wording in this paragraph already had a strong normative character.

11. The Group also considered whether the Executive Body had the authority to decide that Parties are obliged to comply with the *EMEP/CORINAIR Atmospheric Emission Inventory Guidebook* (the Guidebook). The Group noted that the *Guidebook* contained specified and accepted methodologies. However, since the authority to specify methodologies has been granted to the EMEP Steering Body (see, for example, article 7, para. 1(b) of the Protocol on Heavy

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<sup>2</sup> The Cooperative Programme for Monitoring and Evaluation of the Long-range Transmission of Air Pollutants in Europe.

Metals) and not to the Executive Body, the Group concluded that the use of the *Guidebook* was not a matter for the Executive Body to decide upon.

12. Finally, the Group concluded that two protocols (the Protocol on Heavy Metals and the Gothenburg Protocol) contain clear mandates to the Executive Body, but which, for the time being, cannot be utilized, considering the current text of the draft revised Guidelines. This concerns article 7, paragraph 1(a), of these two protocols. The reporting of measures required by these articles is not covered by the Guidelines. Put differently, although these protocols contain a clear basis for a decision by the Executive Body on this issue, there is no point of reference in the Guidelines.

13. The possible draft decision of the Executive Body corresponding to paragraphs 8 (a) to (c) are presented in the annex to the present document.

## **II. IMPROVING THE LANGUAGE OF THE DRAFT REVISED GUIDELINES**

14. The Group agreed on numerous (linguistic) amendments to the text of the draft revised Guidelines, reducing its length by approximately a quarter.

15. Superfluous and repetitive parts of the text were deleted after ensuring that this did not alter the content and the goal of the Guidelines. For example, in chapter III on scope, the part B on substances was deleted since these substances were already specified in annex I to the Guidelines. The Group also agreed on deleting the superfluous repetitions on the distinction between “Parties within the geographical scope of EMEP” and “Parties outside this area”. Chapter III now includes a general, overarching reference to this distinction.

16. The language was simplified and made consistent throughout the Guidelines as well as with the text of the Convention and the protocols. In addition, the Group attempted to make the Guidelines consistent, to the extent possible, with the United Nations Framework Convention on Climate Change Reporting Guidelines (FCCC/SBSTA/2006/9).

17. The Group reformulated the reporting obligations required under the Convention and the protocols (in para. 9 of the draft revised Guidelines) in line with the exact wording of the relevant provisions of the Convention and the protocols. It amended chapter VI on record keeping, in such a way that it directly addresses the Parties, in line with the rest of the Guidelines. The first paragraph of this section referring to storage, accessibility and availability of officially submitted data in the EMEP database was therefore deleted. However, the Group wished to underline the importance of transparent and easily accessible information via the EMEP database.

18. The new version of the draft revised Guidelines as proposed by the Ad hoc Group of Legal Experts and the Co-Chairs of the Task Force on Emission Inventories and Projections for consideration by the Working Group is contained in document ECE/EB.AIR/WG.5/2008/6.

### III. REMAINING POLICY ISSUES

19. The Group came across a number of policy issues during its revision of the Guidelines that remained to be clarified. Since the Group had not been mandated to discuss policy issues, it agreed to refer them to the Working Group on Strategies and Review for its consideration and decision.

20. The Working Group on Strategies and Review may wish to recall document ECE/EB.AIR/WG.5/2007/4 on the Policy Implications of the Emission Reporting Guidelines prepared by the secretariat for its thirty-ninth session. It is invited to reconsider and provide advice on the following two issues that are still subject to policy discussions:

(a) Paragraph 16 of the draft revised Guidelines deals with emissions from transport, stating that “Emissions from road vehicle transport should be attributed to the country where the fuel is sold to the end user. Alternatively, a Party may report emissions from road vehicle transport calculated on the basis of national vehicle kilometres” (i.e. fuel used). The 2002 version of the Guidelines allowed Parties to choose between reporting on fuel sold and fuel used for compliance purposes and encouraged reporting on fuel sold for modelling purposes. While for most Parties the approach chosen will not have a large impact on the data reported, for a limited number of Parties the results can be significantly different. Consequently, the Working Group on Strategies and Review may wish to provide guidance on the choice of approach for calculation of emissions from transport fuels in the draft revised Guidelines.

(b) Paragraph 17 of the draft revised Guidelines stipulates that emissions from fuels used on ships or aircraft engaged in international transport and emissions from forest fires should no longer be included in national totals, but reported separately as memo items. The wording of this paragraph differs from the text on this issue in the 1997 version of the Guidelines. The Working Group may wish to provide guidance on whether or not to include emissions from forest fires in the annual total emission figure. In addition, discrepancies between emissions from aviation and shipping reported as part of national totals under the Convention and to the European Union’s National Emissions Ceilings (NEC) directive are problematic for certain Parties. The European Commission has suggested that that this issue be best solved through the revision of the NEC directive.

Annex**DRAFT DECISION ON EMISSION DATA REPORTING UNDER THE CONVENTION  
AND ITS PROTOCOLS**

*The Parties to the Convention, the Protocol on Nitrogen Oxides, the Protocol on Volatile Organic Compounds, the 1994 Sulphur Protocol, the Protocol on Heavy Metals, the Protocol on Persistent Organic Pollutants and the Gothenburg Protocol, meeting within the Executive Body, Referring to the Guidelines for Reporting Emissions Data under the Convention on Long Range Transboundary Air Pollution (hereinafter “the Guidelines”) approved at the [thirty-second] session of the EMEP Steering Body, and adopted by the Executive Body at its [twenty-sixth] session,*

*Recognizing that the Guidelines apply only to Parties within the geographical scope of EMEP, including those Parties whose respective national territories have a part that overlaps within the EMEP emissions reporting grid and another part lying outside the EMEP domain, and that Parties outside the geographical scope of EMEP are encouraged to take the Guidelines into account when preparing and reporting their annual submissions and to exchange available similar information,*

**A. Decision under the Convention, the Protocol on Volatile Organic Compounds and the 1994 Sulphur Protocol**

*Recalling the Executive Body’s Decision 2002/10 on Emission Data Reporting under the Convention and the Protocols in Force,*

*Decide that the Guidelines referred to in Decision 2001/10 shall be the above-mentioned Guidelines, 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. Decision under the Protocol on Nitrogen Oxides**

*Acting under article 8, paragraph 2, of the 1988 Protocol on Nitrogen Oxides,*

1. *Specify that the uniform reporting framework, referred to in article 8, paragraph 2, of the 1998 Protocol on Nitrogen Oxides, 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, noting that no revision to the Guidelines will affect this specification unless and until it has been expressly so decided by the Executive Body.*

**C. Decision under the 1994 Sulphur Protocol**

*Acting under* article 5, paragraph 1, of the 1994 Sulphur Protocol,

2. *Specify* that the guidelines containing emission data for all relevant source categories used to report on the levels of national annual emission sulphur emissions as mentioned in article 5, paragraph 1(b) of the 1994 Sulphur Protocol are the above-mentioned Guidelines, and

3. *Decide* that the format and content for emissions and other reporting under the 1994 Sulphur Protocol are those set out in the above-mentioned Guidelines, 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 Protocol on Heavy Metals, the Protocol on Persistent Organic Pollutants and the Gothenburg Protocol**

*Acting under* article 7, paragraph 1(b), of the Protocol on Heavy Metals, article 9, paragraph 1 (b), of the Protocol on Persistent Organic Pollutants and article 7, paragraph 1(b), of the Gothenburg Protocol,

*Recalling* the Executive Body's Decision 2005/1 on Emission Data Reporting under the Protocol on Heavy Metals, the Protocol on Persistent Organic Pollutants and the Gothenburg Protocol and in particular paragraph 1 of that Decision,

4. *Approve* the decision by the EMEP Steering Body at its thirty-second session that, in addition to the emission projections for 2010, 2015 and 2020 as specified in Decision 2005/1, Parties shall also report their data on emission projections for 2030 and 2050.

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