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Item 5 of the provisional agenda

Review and revisions of protocols

Draft decision on amending annexes III and VII to the Protocol on Heavy Metals

Note by the ad hoc group of legal experts*

Summary

At its twenty-ninth session, the Executive Body for the Convention on Long-range Transboundary Air Pollution requested the Working Group on Strategies and Review to continue, in accordance with its revised mandate (ECE/EB.AIR/106, para. 57 (a)–(c)), discussions on the Protocol on Heavy Metals at its fiftieth session in September 2012, after finalization of the Gothenburg Protocol revision process, to give the highest priority to securing agreement on the text of an amended protocol before devoting time to any other substantive issue.

At its fiftieth session, the Working Group on Strategies and Review considered options for revising the Protocol on Heavy Metals contained in document ECE/EB.AIR/WG.5/2011/19 and informal document no. 1, as well as additional proposals made during the session. The outcome of these considerations is reflected in a revised informal document no. 1 prepared by the secretariat for the thirty-first session of the Executive Body. The Working Group on Strategies and Review requested the ad hoc group of legal experts to prepare two formal decision documents reflecting the proposed amendments, in accordance with the two amendment procedures stipulated in article 13 of the 1998 Protocol on Heavy Metals, so that they may be translated into all working languages in time to permit their consideration and possible adoption by the Executive Body.

* The present document is being issued without formal editing.

This document presents a draft decision on amending the annexes III and VII to the Protocol on Heavy Metals. Text appearing in square brackets indicates possible amendments on which the Working Group on Strategies and Review did not complete its consideration.

With reference to the proposed deletion of paragraphs 3, 5-7 and sections II – IV in Annex III to the Protocol on Heavy Metals as contained in this document, the Chair of the Task Force on Heavy Metals prepared an updated guidance document on best available techniques extracted from annex III to the Protocol in line with the decision by the Working Group on Strategies and Review at its forty-eighth session. This guidance document was updated at the Working Group's fiftieth session and is contained in the annex of draft decision ECE/EB.AIR/2012/L.5 for the consideration and possible adoption by the Executive Body at its thirty-first session.

Draft Decision 2012/6

Amendment of annexes III and VII to the 1998 Protocol on Heavy Metals

The Parties to the 1998 Protocol on Heavy Metals, meeting within the thirty-first session of the Executive Body,

Decide to amend annexes III and VII to the 1998 Protocol on Heavy Metals to the Convention on Long-range Transboundary Air Pollution ("the Protocol") as follows:

Article 1

Amendments

A. Annex III

1. The subheading "I. INTRODUCTION" of the annex is deleted.
2. In paragraph 1, a new sentence is inserted at the end of the paragraph as follows:

"Further description of and guidance on such best available techniques are provided in a guidance document adopted by the Parties at a session of the Executive Body and may be updated as necessary by a consensus of the Parties meeting within the Executive Body."
3. For paragraph 2, the following text is substituted:

"2. The expression "Best available techniques" (BAT) means the most effective and advanced stage in the development of activities and their methods of operation which indicate the practical suitability of particular techniques for providing the basis for emission limit values (and other permit conditions) designed to prevent and, where that is not practicable, to reduce emissions and their impact on the environment as a whole:

 - (a) "Techniques" includes both the technology used and the way in which the installation is designed, built, maintained, operated and decommissioned;
 - (b) "Available" techniques means those developed on a scale which allows implementation in the relevant industrial sector, under economically and technically viable conditions, taking into consideration the costs and advantages, whether or not the techniques are used or produced inside the territory of the Party in question, as long as they are reasonably accessible to the operator;
 - (c) "Best" means most effective in achieving a high general level of protection of the environment as a whole.

Criteria for determining BAT are as follows:

 - (i) The use of low-waste technology;
 - (ii) The use of less hazardous substances;
 - (iii) The furthering of recovery and recycling of substances generated and used in the process and of waste, where appropriate;
 - (iv) Comparable processes, facilities or methods of operation which have been tried with success on an industrial scale;

- (v) Technological advances and changes in scientific knowledge and understanding;
- (vi) The nature, effects and volume of the emissions concerned;
- (vii) The commissioning dates for new or existing installations;
- (viii) The length of time needed to introduce the best available technique;
- (ix) The consumption and nature of raw materials (including water) used in the process and energy efficiency;
- (x) The need to prevent or reduce to a minimum the overall impact of the emissions on the environment and the risks to it;
- (xi) The need to prevent accidents and to minimize their consequences for the environment;
- (xii) Information published by national and international organizations.

The concept of BAT is not aimed at the prescription of any specific technique or technology, but at taking into account the technical characteristics of the installation concerned, its geographical location and the local environmental conditions."

- 4. Paragraph 3 is deleted.
- 5. In paragraph 4:
 - (a) The words "this annex" are replaced with the words "the guidance document referred to in paragraph 1 above";
 - (b) The words "amending and" are deleted;
- 6. Paragraphs 5 to 68 and related tables and headings are deleted.

B. [Annex VII

- 7. In paragraph 2:
 - (a) The word "and" at the end of subparagraph (d) is deleted;
 - (b) At the end of subparagraph (e), the text "manner." is replaced with the text "manner; and";
 - (c) A new subparagraph (f) is inserted after subparagraph (e) as follows;
 - (f) The establishment of [a] collection system[s], [where deemed cost-effective], for the mercury and mercury-containing products, [the aim being to dispose of the mercury in an environmentally sound manner.]
- 8. In paragraph 3, subparagraphs (a), (b) and (c) are deleted.]

Article 2 Entry into force

In accordance with article 13, paragraph 4, of the Protocol, this amendment shall become effective for those Parties which have not submitted a notification to the Depositary in accordance with article 13, paragraph 5, of the Protocol on the expiry of ninety days from the date of its communication to all Parties by the Executive Secretary of the Commission, provided that at least sixteen Parties have not submitted such a notification.