

**Executive Body,  
Thirty-first session, 11-13 September 2012**

**Informal document No. 4**

**Provisional agenda item 5  
Review and revision of protocols**

**Note by the Ad-hoc Group of Legal Experts**

**on changes to the proposed amendment document for the Protocol on Heavy Metals  
(ECE/EB.AIR/2012/L.3)**

To: The Parties and Secretariat of the Convention on Long-Range Transboundary Air Pollution

From: The Ad Hoc Group of Legal Experts

Date: September 24, 2012

Re: Changes to the Proposed Amendment Documents for the Protocol on Heavy Metals

At its 50<sup>th</sup> Session, the Working Group on Strategies and Review asked the Ad Hoc Group of Legal Experts, in cooperation with the Secretariat, to prepare formal decision documents reflecting the proposed amendments to the Protocol on Heavy Metals for consideration and possible adoption by the Parties to the Protocol meeting within the Executive Body.

In preparing these documents, the legal experts have identified some suggested changes to the text forwarded by the Working Group on Strategies and Review. We have incorporated these changes into the draft decision documents. The below is intended to help explain the reason for the suggestions; the legal experts stand ready to discuss these issues in the Executive Body or at any other appropriate meeting.

1. Article 1, paragraph 10

The proposed amendment as approved by the Working Group on Strategies and Review included a suggestion to replace the last sentence of this paragraph, which reads as follows:

It shall be a matter for the competent national authorities to decide whether a modification is substantial or not, taking into account such factors as the environmental benefits of the modification

with substantially identical text reading as follows:

It shall be a matter for the competent national authorities to decide whether a modification is substantial or not, taking account of such factors as the environmental benefits of the modification.

The only difference between the two texts is to use the words “taking account of” instead of “taking into account.” We believe this proposed change was inadvertent and non-substantive. Because it would greatly simplify the amendment to omit this suggested change, we have done so.

2. Article 3, paragraph 2(e)

We have not made a suggested change to this paragraph, but we wish to point out that, if the Parties were to agree to this amendment, it would have to be re-structured. The chapeau of paragraph 2 says each party “shall apply:” the rules set forth in the subparagraphs (currently a through d). Proposed new subparagraph (e), however, is not a rule to be applied, but rather an alternative to the rules set out in subparagraphs (c) and (d). If it is retained, the concept contained in subparagraph (e) should probably be made into plain text after subparagraph (d) without a separate paragraph indication – in other words, part of the regular paragraph 2 text – or into a new paragraph 2bis.

3. Article 13, paragraph 5ter

The proposed amendments to Article 13, including to add paragraph 5ter, closely track recent amendments to the Gothenburg Protocol. In those amendments, the paragraph that contains the same language as proposed paragraph 5ter is formatted differently than the proposed paragraph 5ter. It includes a basic paragraph and then subparagraphs (a) and (b), rather than starting with subparagraph (a) and continuing to (b) and (c). We propose using the same format as in the Gothenburg Protocol amendments.