

## **Comments by the UN Office of Legal Affairs on draft Decisions ECE/EB.AIR/2012/L.1 and ECE/EB.AIR/2012/L.2 on amendments to the Gothenburg Protocol and its annexes**

### **Note by the secretariat**

1. In accordance with the Secretary-General's bulletin Procedures to be followed by the departments, offices and regional commissions of the United Nations with regard to treaties and international agreements (ST/SGB/2001/7), the text of any treaty or amendments needs to be submitted to the depositary prior to finalization. Draft decision ECE/EB.AIR/2012/L.1 and ECE/EB.AIR/2012/L.2 were submitted to the depositary for comments and review.
2. The depositary has made the following comments:

#### **Draft decision ECE/EB.AIR/2012/L.2**

The draft new article 18 bis entitled "Termination of Protocols" of the Draft Decision on amending the text of and annexes II to IX to the Gothenburg Protocol to Abate Acidification, Eutrophication and Ground-level Ozone and the addition of new annexes X and XI, provides that:

"When all of the Parties to each of the following Protocols have deposited their instruments of ratification, acceptance, approval of or accession to this Protocol with the Depositary in accordance with article 15, each of those Protocols shall be considered as terminated:

- (a) The 1985 Helsinki Protocol on the Reduction of Sulphur Emissions or their Transboundary Fluxes by at least 30 per cent;
- (b) The 1988 Sofia Protocol concerning the Control of Emissions of Nitrogen Oxides or their Transboundary Fluxes;
- (c) The 1991 Geneva Protocol concerning the Control of Emissions of Volatile Organic Compounds or their Transboundary Fluxes;
- (d) The 1994 Oslo Protocol on Further Reduction of Sulphur Emissions."

The depositary does not have any comments on the article 18 bis. It will carefully monitor the deposit of instruments of consent to be bound for the Gothenburg Protocol, and for each of the mentioned protocols.

#### **Draft decision ECE/EB.AIR/2012/L.2**

In relation to the Draft Decision amending annex I to the Gothenburg Protocol to Abate Acidification, Eutrophication and Ground-level Ozone, the depositary has

advised to clarify whether the draft Article 2 intends to repeat the existing article 13, paragraph 4, on the entry into force of amendments, and to apply these provisions to the amendment to annex I; or this article intends to be a new entry into force provision only for the amendment to annex 1.

In the first case, the draft formulation of this provision would be incomplete, missing one of the provision/condition for the entry into force (provided that at least sixteen Parties have not submitted notification) that has been deleted in the draft. In fact, article 13, paragraph 4 provides that:

"Amendments to the annexes to the present Protocol, other than to the annexes referred to in paragraph 3, shall be adopted by consensus of the Parties present at a session of the Executive Body. On the expiry of ninety days from the date of its communication to all Parties by the Executive Secretary of the Commission, an amendment to any such annex shall become effective for those Parties which have not submitted to the Depositary a notification in accordance with the provisions of paragraph 5, provided that at least sixteen Parties have not submitted such a notification."

In the second case, if Article 2 intends to create new provisions for the entry into force of the amendment to annex 1 only, it should be a new paragraph of article 13 (new paragraph bis of article 13 ?)

It should also be noted that the requirements for the entry into force of amendments are for instance regulated by article 13, paragraph 4. Consequently, if the proposed amendment intends to modify these requirements in relation with the entry into force of this particular amendment (amendment to annex I), this provision will only be applicable when the amendment to annex I will enter into force, in accordance with the provisions set forth in the existing article 13, paragraph 4.

In this connection, the depositary would also suggest deleting in this paragraph the reference to article 13, paragraph 4 to read:

"This amendment to annex I to the Protocol 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."

The conditions for the entry into force of the amendment to annex I would not in fact be exactly the same as the conditions set out in article 13, paragraph 4.

3. The Parties to the Gothenburg Protocol are invited to take into consideration the comments by the depositary.