

27 February 2012

## **Swiss Comments on Draft Revised Annex IX (ECE/EB.AIR/2012/11) and draft paragraphs 7a) and 7b) of a revised Gothenburg Protocol**

The draft revised Annex IX as presented in document ECE/EB.AIR/2012/11 has to be analyzed in the context of the progress it will potentially achieve compared with the current Annex IX in the existing Gothenburg Protocol and with respect to the clarity and transparency it will create vis-à-vis the position of the BAT measures addressed in the updated Guidance Document for Preventing and Abating Ammonia Emissions from Agricultural Sources (Guidance Document on BAT).

### *Appreciation of the existing regulation under the current Gothenburg Protocol*

We would like to make some initial remarks addressing the solution we have since 1999 under the current Gothenburg Protocol and its implications for the implementation Parties have to carry out:

Under article 3 (Basic Obligations) of the existing Gothenburg Protocol we have

- paragraph 8a) referring to Annex IX and stipulating that Parties **shall apply as a minimum** the ammonia control measures specified in Annex IX; and
- paragraph 8b) referring to the Guidance Document on BAT and stipulating that Parties **shall apply, where they consider it appropriate, best available techniques** for preventing and reducing ammonia emissions, **as listed in the guidance document V** adopted by the Executive Body at its 17<sup>th</sup> session (decision 1999/1) and any amendments thereto.

This distinction between a fully mandatory Annex IX with a set of required minimum measures and a recommendatory part on BAT – still with a wording “**shall apply, where they consider it appropriate**” – makes the situation very clear and encourages Parties to work – in addition to Annex IX – also with the Guidance Document, and this without any restrictions and limitations concerning farm sizes, animal categories etc.. Even though the existing mandatory Annex IX is weak for regulating manure storage and animal housing in a broader context due to its limitation to big pig and poultry farms according to the existing regulations at the level of the EU, it at least requires minimum measures for manure application without any farm size and animal category limitations. And according to paragraph 8b) the competence is fully given to the Parties to work with the Guidance Document on BAT. This clear distinction between a mandatory Annex IX and a “shall apply, where they consider it appropriate”- formulation for the Guidance Document gives a sufficiently high weight to the Guidance Document on BAT in its integral form. With such a structure in the Protocol each Party can apply measures designated in the Guidance Document as BAT and can make progress also in areas not regulated by Annex IX.

### *Assessment of the proposals to amend Annex IX and paragraphs under article 3*

The new proposals for revising the paragraphs 8a) and 8b) of article 3 (basic obligations) are formulated as paragraphs 7a) and 7b) as follows:

7. Each Party **shall**, subject to paragraph 9:

a) **Apply, as a minimum, the ammonia control measures specified in Part A of Annex IX.** [As an alternative, a Party may apply different emission reduction strategies that achieve at least the equivalent overall emission levels for all source categories together;] and

b) **Apply, where it considers it appropriate, the control measures specified in Part B of Annex IX and best available techniques** for preventing and reducing ammonia emissions, **as listed in guidance document III** adopted by the Executive Body at its xxth session (decision 20xx/x) and any amendments thereto.

The document ECE/EB.AIR/2012/11, the new proposal for Annex IX, specifies the contents of Part A and Part B mentioned above in the new paragraphs 7a) and 7b).

When examining the Part A it becomes evident that it does not really contain additional mandatory measures compared with the existing Annex IX. It still concentrates on the big pig and poultry farms according to the existing regulations for such farms at the level of the EU. The addition proposed for slurry application for such big farms (§17 and table 2: 30% emission reduction) does not go beyond the requirements formulated in §19 (corresponding to §6 of the existing Annex IX) which requires also 30% emission reductions, but for all farm types (not only for big pig and poultry farms). It is in fact not understandable that big farms are not requested to do more since they are most probably in an economic and structural situation that allows them to apply more advanced techniques. The currently proposed structure of Part A with mentioning §19 at the end of Part A after §§ 17 and 18 makes it also less clear to understand its position within the whole context. The position of §6 in the existing Annex IX was much clearer. Moreover, the §7 of the existing Annex IX addressing solid manure application for all farm types got lost as such and appears now within the mandatory Part A as §18 only for big pig and poultry farms and in the recommendatory Part B as §31 with limitation to cattle farms only. This is an additional weakening compared with the existing Annex IX.

Part B of the proposed revised Annex IX is fully recommendatory. Although it is fully recommendatory, it contains in addition some weak formulations like “can be established”, “can be used”. It is also for most parts limited to cattle farms with – in square brackets – greater than 50 animals. In a recommendatory part it does not really make sense to introduce cut-offs for farm sizes and weak formulations since such cut-offs and weak formulations do not appear in the Guidance Document on BAT being also fully recommendatory. And in the case of cattle the criterion “animals” might even lead to confusion since both dairy cows and beef cattle or fattening calves are cattle animals but have very different N excretions. Thus the number “50” for animals does not mean the same for different cattle categories. We have the impression that the proposal for Part B contains some selected elements from the Guidance Document but without giving them a higher weight when transferring them from the Guidance Document to Annex IX. Moreover, compared with the full set of BAT measures available for all animal categories in the Guidance Document, and due to the limitation on cattle in Part B, one gets the impression that the selection for Part B is to a certain extent arbitrary and does not really put the weight on the most efficient measures available for all animal categories. If one would concentrate on efficiency, measures should also be addressed for pig and poultry farms smaller than those in Part A, covering feeding strategies, housing, manure storage and application. Many of these measures have proven their efficiency in agricultural practice.

Overall, we have the impression that Part B in its proposed form is a duplication of parts from the Guidance Document, but with even weaker formulations and more limitations than in the Guidance Document. Thus Part B of Annex IX in the proposed form does not bring an additional value to the Guidance Document.

### *Conclusions*

Under these circumstances, and under the prerequisite that, at this stage, the EU is not in the position to accept mandatory provisions in Annex IX that go beyond the existing regulations in the EU, we come to the conclusion that it would be better

- to keep the existing Annex IX as it is, i.e. without additional mandatory measures and without recommendatory Part B, but of course with a reasonable adaptation of the time-scales for the application of the existing mandatory measures for potential new Parties, and
- to concentrate further work on making real progress in updating the Guidance Document on BAT and the Framework Code on Good Agricultural Practice.

**Thus we propose to formulate §7a) and 7b) without any changes, i.e. to maintain the text as it is in the §§ 8a) and 8b) of the existing Gothenburg Protocol.**

If one would like to highlight the fact that cattle farms are responsible for a high share of ammonia emissions in the ECE region and thus should be given a special attention, one could e.g. complement §7b) as follows:

“Parties shall apply, where they consider it appropriate, best available techniques for preventing and reducing ammonia emissions, as listed in the guidance document III adopted by the Executive Body at its xx<sup>th</sup> session (decision 20xx/x) and any amendments thereto. **Special attention should be given to reductions of emissions from cattle farms due to their high share of emissions in the ECE region within the geographical scope of EMEP.**“

With such an addition under §7b) we would maintain the recommendatory character of measures for cattle farms, avoid duplications with the Guidance Document and maintain the weight of the Guidance Document in its integral form.

Since with this proposal we would, at this stage, not go beyond the already existing mandatory measures, and since we know that substantially more should be done to solve the nitrogen problem, we clearly support the idea brought up in an in-room paper at the last EB to introduce under article 10 paragraph 3 an expedited procedure to review the Annex IX on ammonia.

Swiss Delegation to the Executive Body

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