

Institutional and procedural issues related to the SEA Protocol

A discussion note prepared for the Meeting of Signatories by the UK, Germany and the Netherlands

Introduction

We recall that MOP-3/Espoo, in its Decision III/12, noted that it will be necessary for preparations to take place in the period leading up to the first Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol (hereinafter referred to as MOPMOP). In that light, the decision also identified preparatory work specifically related to institutional and procedural issues (see paragraph 4 of Decision III/12).

Pursuant to the work plan agreed at MOP-3, the UK, Germany and the Netherlands herewith submit a discussion note, including three associated draft MOPMOP-decisions, to assist the Meeting of Signatories in undertaking the preparatory work on four of the five institutional and procedural activities identified in paragraph 4 of Decision III/12.

This note, and the draft MOPMOP-decisions, deal with the Rules of Procedure (paragraph 4(a)(i) and (ii), of Decision III/12), the Review of Compliance (paragraph 4(a)(iii) of Decision III/12), and the envisaged establishment of a subsidiary body under the Protocol (paragraph 4(a)(iv), of Decision III/12).

Not addressed yet in the current note is paragraph 4(a)(v) of Decision III/12, on the institutional and administrative aspects of the relationship between MOP and MOPMOP. The UK, Germany and the Netherlands will come forward with a separate discussion note on this issue at a later stage, for consideration by the Meeting of Signatories.

1. Rules of Procedure

Article 14, paragraph 5, of the SEA Protocol provides that the Rules of Procedure of the Meeting of the Parties of the Convention (hereinafter referred to as MOP/Espoo) shall be applied, *mutatis mutandis*, to the Protocol, unless otherwise decided by consensus by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the SEA Protocol (hereinafter referred to as MOP/MOP/SEA).

The implementation of Article 14, paragraph 5, requires a decision by the first MOP/MOP/SEA which addresses the composition of the (integrated) Bureau (see paragraph 1.1 below), and the method by which amendments of the Rules of Procedure as agreed by the MOP/Espoo are accepted by the MOP/MOP/SEA (see paragraph 1.2 below). Both issues could be part of a single decision on the Rules of Procedure by the first MOP/MOP/SEA.

1.1 Composition of the (integrated) Bureau

The Convention and the Protocol will share the same Bureau. However, where the Bureau is dealing with Protocol issues, its members will have to be representatives of Parties to the Protocol only. Hence, Article 14, paragraph 3, of the SEA Protocol, which provides that any member of the Bureau representing a Party to the Convention that is not, at that time, a Party

to the Protocol, shall be replaced by another member representing a Protocol Party, to be elected by the MOP/MOP/SEA.

To accommodate this system of replacements, including providing clarity as regards the terms of office of the Bureau members, the first MOP/MOP/SEA may wish to adopt a decision on the Rules of Procedure which supplements the current Rule 19 of the Rules of Procedure of MOP/Espoo.

Annex I to the current note contains a draft MOPMOP decision on the Rules of Procedure. Paragraph 1 of that draft decision provides wording to supplement Rule 19 of the Rules of Procedure of MOP/Espoo to accommodate the required system of replacements.

1.2 Amendments of the Rules of Procedure

In order to avoid procedural uncertainty and ambiguity, it is opportune that the first MOP/MOP/SEA also takes a decision on how amendments of the Rules of Procedure adopted by the MOP/Espoo will apply to the MOP/MOP/SEA. The simplest way of doing so, is for the first MOP/MOP/SEA to adopt a decision, by consensus, which provides that amendments to the Rules made by MOP/Espoo shall also apply to the MOPMOP, but keeps intact the prerogative of the MOPMOP to decide otherwise.

Paragraph 2 of the draft decision on the Rules of Procedure (Annex I to the present note) provides wording concerning amendments to the Rules.

2. Modalities for applying the compliance procedure to the Protocol.

Article 14, paragraph 6, of the SEA Protocol, provides that the first MOP/MOP/SEA shall consider and adopt the modalities for applying the compliance procedure of the Convention to the Protocol. The decision by the first MOP/MOP/SEA as regards such modalities will have to include the following issues.

2.1 The composition of the Implementation Committee

Parties under the Convention will not necessarily correspond to those under the Protocol. Consequently, the composition of the Implementation Committee has to be adjusted when the Committee considers compliance matters pertaining to the Protocol. Such adjustment has to accommodate two situations. First, a Party to the Convention is not necessarily a Party to the Protocol. It would be legally unsound for those members of the Implementation Committee, that are not a Party to the Protocol, to participate in the Committee when it addresses compliance issues of Parties to the Protocol. Second, as a result of the Protocol being open to ratification or accession by States that are not Parties to the Convention, a Party to the Protocol is not necessarily a Party to the Convention. It would be legally unsound to exclude those Protocol parties from membership of the Committee. Because the Protocol will definitely be confronted with the first scenario, the text proposals in the annexed draft MOPMOP decision only focus on accommodating that situation.

Paragraph 1 of the draft MOPMOP-decision on compliance (Annex II to the present note) relates to the composition of the Implementation Committee where it considers

issues relating to compliance with the Protocol. Paragraph 2 of the draft MOPMOP-decision introduces the system of replacements.

2.2 Amendments to the compliance procedure

As with the Rules of Procedure (see paragraph 1.2 above), the first MOP/MOP/SEA will need to decide how it wishes to deal with amendments to the compliance procedure adopted by the MOP/Espoo. The most straightforward approach would be for the first MOP/MOP/SEA to decide that amendments to the procedure made by MOP/Espoo shall also apply under the Protocol, but leaving intact the possibility for MOPMOP to decide otherwise.

See paragraph 3 of the draft MOPMOP-decision on the review of compliance (Annex II to the present note).

3. Establishment of a subsidiary body

At the first MOPMOP/SEA, a working group will need to be established to take forward the work plan under the Protocol and to report back to subsequent meetings of the MOPMOP. The draft decision in Annex III to the current note, sets up the working group and entrusts it with the task of managing and taking forward the (implementation of the) work plan, monitoring the budget and recommending further work to be undertaken in light of the experience gained. The discussion, held in the two meetings of the ad hoc working group preparing for the first meeting of the Signatories to the Protocol, on whether to integrate the working group on the Protocol in the working group on the Convention or to have back-to-back-meetings of both groups, should be noted.

See Annex III of the current note for a draft MOPMOP decision on the establishment of a Working Group on SEA.

ANNEX I

[DRAFT] MOP/MOP DECISION I/1

RULES OF PROCEDURE

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol,

Recalling paragraph 5 of Article 14 of the Protocol, which provides that the rules of procedure of the Meeting of the Parties to the Convention shall be applied *mutatis mutandis* under the Protocol, except as may otherwise be decided by consensus by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol,

Conscious of paragraph 3 of Article 14 of the Protocol, which addresses the composition of the Bureau,

Having reviewed the application of the rules of procedure of the Meeting of the Parties to the Convention under the Protocol,

1. Decides, by consensus, that, when rule 19 of the rules of procedure of the Meeting of the Parties to the Convention is applied to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, this rule shall be supplemented by the following paragraph:

“A member of the Bureau of the Meeting of Parties to the Convention that represents a Party to the Protocol, having replaced a member representing a Party to the Convention, shall serve a term of office that expires at the same time as the term of office of the member of the Bureau whom he or she replaces .”

2. Also decides, by consensus, that when the rules of procedure of the Meeting of the Parties to the Convention are amended by the Meeting of the Parties to the Convention, those amendments shall apply *mutatis mutandis* to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, unless otherwise decided by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol.

ANNEX II

[DRAFT] MOP/MOP DECISION I/x

REVIEW OF COMPLIANCE

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol,

Recalling paragraph 6 of Article 14 of the Protocol, which concerns the application of the procedure for the review of compliance with the Convention to the Protocol,

Noting the Appendix to Decision III/2 of the Meeting of the Parties, setting out the structure and functions of the Implementation Committee and procedures for the review of compliance,

Having considered the modalities for the application of the procedure for the review of compliance, pursuant to paragraph 6 of Article 14 of the Protocol,

Emphasising that, in applying to the Protocol the structure and functions of the Implementation Committee and the procedures for review of compliance which are set out in the Appendix to Decision III/2, references in the Appendix to the Convention and to the Meeting of the Parties to the Convention shall, where review of compliance with the Protocol is concerned, be understood as references to the Protocol and to the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, respectively,

1. Decides that, where the Implementation Committee is considering issues relating to compliance with the Protocol, it shall be comprised only of members appointed by Parties to the Protocol,

2. Decides also to consider, at each ordinary meeting, the composition of the Implementation Committee as decided by the Meeting of the Parties to the Convention, and, where this is necessary pursuant to paragraph 1, to elect the necessary number of Parties, to take the place on the Implementation Committee, of those Parties to the Convention which at that time are not a Party to the Protocol, (until such time as those Parties become Party to the Protocol) and (where those Parties do not become Party to the Protocol) for the same term as those Parties.

3. Furthermore decides that when the Appendix to Decision III/2 is amended by the Meeting of the Parties to the Convention, the amended Appendix shall also apply *mutatis mutandis* to the Protocol, unless otherwise decided by the Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol.

ANNEX III

[DRAFT] MOP/MOP DECISION I/x

**ESTABLISHMENT OF THE WORKING GROUP ON
STRATEGIC ENVIRONMENTAL ASSESSMENT**

The Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol,

Recalling paragraph 4(d) of Article 14 of the Protocol, which concerns the establishment of subsidiary bodies necessary for the implementation of the Protocol,

Having considered the most appropriate ways of effectively implementing the Protocol and successfully taking forward its work plan,

Concluding that it is necessary to establish a subsidiary body for this purpose,

1. Establishes a subsidiary body, called the Working Group on Strategic Environmental Assessment, to assist in the implementation of the Protocol and the management of the work plan;
2. Requests this subsidiary body, in carrying out the tasks assigned to it in paragraph 1, to take the necessary steps to take forward the work plan agreed at the first Meeting of the Parties to the Convention serving as the Meeting of the Parties to the Protocol, to monitor the expenditure of funds associated with the implementation of the work plan, to report to it at its second and subsequent meetings on progress in the implementation of the work plan and monitoring of expenditure, and to ensure the efficient management of work plans which are agreed from time to time by the Meeting of the Parties to the Convention serving as the Meeting of Parties to the Protocol.
3. Invites the subsidiary body, in the light of experience in the implementation of the work plan, to make recommendations for consideration at the second and subsequent Meetings of the Parties to the Convention serving as the Meetings of the Parties to the Protocol on further work necessary to ensure the effective implementation of the Protocol.
4. Invites ECE member countries non-Parties to the Protocol, governmental, non-governmental and other relevant international organisations and institutions to contribute fully, in accordance with the rules of procedure, as observers to the work undertaken by the subsidiary body to implement the Protocol.