

## Convention on Long-Range Transboundary Air Pollution (CLRTAP)

### 62<sup>nd</sup> session of the WGSR (Geneva, 27-31 May 2024)

#### Amendments to the Rules of Procedures (RoP)

#### Submission by the EU and its member states

We submitted our views on the possible amendments to the Rules of Procedure as contained in the EB43 report ECE/EB.AIR/2023/8 on 29 January 2024. We note that these views have not yet been taken into account by the ad hoc group of experts when preparing the revised text of the Rules of Procedure for consideration by the Working Group at this session. Therefore, we have taken our submission of 29 January 2024 as a starting point to reassess the proposed amendments in the new report (document ECE/EB.AIR/WG.5/2024/2) and to further finetune our views and comments. These are the following:

- Harmonization in the usage of terms “meetings”, “sessions” and “proceedings”  
The legal experts felt that the use of the terms "meetings", "proceedings" and "sessions" should be harmonised (see paragraph 9 of the report of the legal experts). In the proposed revised text of the RoP, the term "meetings" has been replaced by "sessions" in some rules, but retained in others (rules 10(1), 14, 21(1) and (3), 23, 24(1)). The term "proceedings" has also been retained. The different usage is still not clear. In particular, replacing "meetings and proceedings" with "sessions" in rule 21(1) seems appropriate to be consistent with the wording in rule 1.
- Scope (rule 1)  
Since the RoP according to rule 21(1) also apply mutatis mutandis to the meetings and proceedings of subsidiary bodies, unless otherwise specified, we can support the extension of the scope in rule 1 to sessions of the subsidiary bodies, but we doubt whether it is appropriate to specify in rule 1 that the RoP also apply to the functioning of the Bureau. We consider this implicit. If we specify the functioning of the Bureau, why not also the secretariat, observers, and officers? In this regard we would also like to note here that it is unclear to us whether rule 20 on the Bureau only applies to the Bureau of the Executive Body, or also to the Bureaus of the subsidiary bodies, since the mutatis mutandis rule 21 only applies to the meetings and proceedings of the subsidiary bodies, and we are not sure whether the functioning of the Bureau is covered by the term “proceedings of the subsidiary bodies” (in particular when “Bureau” would be singled out in rule 1). If covered, “Bureau” in rule 1 should at least be replaced by “Bureaus” (in plural).
- Definition for “officers of the session” (rule 2(k))  
The definition of “officers of the session” added in rule 2 refers only to the Vice-Chairs present at the session and not to the Chair. The term “officers of the session” is used only twice, in rule 15 for examining the credentials and in rule 17bis(3)(c), for counting votes. To avoid confusion with the use of “officers’ in other places in the RoP (e.g. rules 6(1), 17(2), 17bis(1) and 17bis(3)(a)), where it is clear that this term also implies “Chair”, it would be better to remove the added definition and to replace “officers of the session” with “Vice-Chairs present at the session” in existing rule 15 and new rule 17bis(3)(c).  
(A similar comment has been made by the secretariat: see informal document to WGSR62)
- Frequency (rule 3(1))  
The addition that the Executive Body is to meet at least annually in accordance with article 10, paragraph 1 of the Convention, has the consequence that this new rule under rule 21 applies mutatis mutandis to the subsidiary bodies. Thus, this is not simply a repetition of the text of the Convention, but imposes an additional requirement on the subsidiary bodies that was not originally intended in the text of the Convention.
- Hybrid /virtual session (rules 2(i) and (j), 3(2), 3(3), 17bis(7))

Our views on this issue that we submitted to the Secretariat on 29 January are still valid, meaning that any proposed amendment relating to hybrid/virtual meetings should not be too prescriptive, so as not to unnecessarily complicate the operation of such meetings, and to maintain sufficient flexibility.

For the sake of consistency, we recommend using "Executive Body" or "Parties" in both rule 3(1) and rule 3(2), instead of the current mixed use in these rules.

It is unclear why operating practices (rule 3(3)) are to be prepared by the secretariat, except when these practices cannot be adopted by the EB in time, then it would be for the Bureau to set practices until the EB can adopt them. Why this distinction? In either case, why can't these practices be prepared by the Bureau in consultation with the secretariat (or vice versa)? If necessary, they can be applied provisionally (before their adoption). Furthermore, since rule 3 also applies mutatis mutandis to the meetings of the subsidiary bodies, would that mean that each bureau can set separate draft operating practices for its subsidiary body?

Rule 17bis(7) makes online voting for officers possible. It is less clear for the amended rule 30 on decision-making, as "voting by show of hands" seems to require in-person meetings.

- Geographical and gender balance of officers (rule 17(1))

Our views on this issue that we submitted to the Secretariat on 29 January are still valid: we prefer not to include a reference to geographical and gender balance, as Bureau members should be elected on the basis of their individual capacity and expertise, and are expected to act in the interest of the Convention and not for a particular gender or geographical region. We also note that the geographical and gender balance is proposed only with respect to the chair and vice-chairs of the EB and not for the entire EB Bureau, which also includes the Chairs of the subsidiary bodies and the Implementation Committee. This seems inconsistent.

- Number of Vice-Chairs (rule 17(1))

The number of Vice-Chairs remains a political decision to be taken by the Parties. We have so far seen no valid reason to increase the number of Vice-Chairs for the EB. We therefore maintain our position that we do not consider this a necessary amendment. Note that the EB Bureau already consists of a total of eight members (chair and three vice-chairs of the EB and chairs of the subsidiary bodies and the IC), and one observer. Note also that subsidiary bodies can already elect more than three vice-chairs.

- Length of term of office (rule 17(2))

Also regarding the proposal to increase the length of term of office from two to three years, we have not seen any good reason for such an increase. We are also not aware of any application problems of rule 17(2). While we have no objection to extending the term of office to three years, we can also agree to leave rule 17(2) unchanged and keep the term of office at two years.

- Election of officers (rule 17bis)

The new rule 17bis has been adjusted to address some of the comments made by the ad hoc group of legal experts. Nevertheless, as already reiterated in our submission of 29 January, we maintain our position that the detail of the proposed new rule 17bis seems disproportionately prescriptive compared to the general voting rules. We question the usefulness and necessity of the proposed detail. We also question whether the voting of officers would require credentials, as rule 14 seem to imply that voting requires credentials. Credentials are not currently required for the subsidiary bodies. We understand that voting to elect officers should not be covered by the decision making rules 29 and 30, as these rules, unlike the new rule 17bis, apply only to the Executive Body and not to the subsidiary bodies.

- Absence or premature resignation of the Chair (rule 19)

We propose to align first part of rule 19(2) ("*If the Chair resigns before .... functions*") with first part of first sentence of rule 20(3) ("*If the Vice-Chair of the Executive Body resigns .... functions of said office*")

We see no need to include provisions to appoint a first Vice-Chair to replace the Chair, as suggested in paragraph 7 of document ECE/EB.AIR/WG.5/2024/2, as we do not expect disputes that cannot be resolved. We prefer to maintain flexibility in case the Chair (e.g. because of sudden illness as happened in 2023), needs to be replaced, leaving open the option of appointing an acting Vice-Chair or dividing the responsibilities among several Vice-Chairs, so that the burden can be shared. In this context, it may be noted (by comparison) that the Task Forces have been led by two co-chairs for many years. So far, they have always been able to divide their tasks and roles without any problem. So why should there be a problem between vice-chairs? A new provision on who should act/be elected or appointed as first vice-chair, may require additional new rules that could further complicate procedures (e.g. in case the first vice-Chair resigns or leaves (in accordance with rule 20(3)), who replaces? Someone from the same Party who may be less familiar with the Convention or another vice-chair?) By appointing a Chair and a first vice-Chair in the Bureau, the other members may feel demoted to second-class members in the Bureau and feel less committed.

- The Bureau (rule 20(4))

As already noted, it is unclear to us whether rule 20 on the Bureau, and in particular the new tasks imposed on the secretariat, applies only to the Bureau of the Executive Body, or, in line with the *mutatis mutandis* rule 21, would also apply to the Bureaus of the subsidiary bodies. Can this be clarified / addressed if necessary?

- Subsidiary bodies (rule 21(6))

We welcome that the deletion of rule 29 in rule 21(6) has been revoked, meaning that rule 29 on decision-making does not apply to subsidiary bodies. Instead, it was added to rule 21(6) that all subsidiary bodies shall make every effort to adopt their recommendations to the Executive Body by consensus. We see no added value in this addition and therefore do not support it. If consensus is not reached by a subsidiary body it can be reflected in its meeting report. Subsidiary bodies also take decisions / make recommendations that are not forwarded to the Executive Body (for which the encouragement in 21(6) would not apply).

In addition we notice an inconsistency between paragraph 1 of rule 21 that refers to “meetings and proceedings” and paragraph 6 of rule 21 that refers to “proceedings”. It is unclear to us why “meetings” has been added in paragraph 1 that has created this inconsistency.

- Decision making (29bis and 30)

Repeating the wording of EB decision 1998/3 as a new rule 29bis, which states that decisions pertaining to the Implementation Committee shall be made by consensus, makes sense because otherwise there would be an inconsistency between the provisions of EB decision 1998/3 requiring decisions by consensus and rule 29 of the RoP requiring only majority voting, including in relation to decisions of the Executive Body pertaining to the Implementation Committee. If rule 29bis would not be inserted, EB decision 1998/3 should be repealed.

Regarding the voting rules in rule 30, we note that the comments made by the legal experts have triggered some changes. We believe the current proposal is improved, although we still believe that the level of detail added to rule 30 may not be necessary.

In general, as we have already communicated on previous occasions, we would like to stress the need to submit only well-reasoned and necessary proposals to the EB for consideration. The Rules of Procedure should help and support the Parties in decision-making, but should not unnecessarily restrict the Parties' choices or ability to adapt to a given situation. If it is not a problem, we do not need to solve it. We therefore propose to focus during the 62<sup>nd</sup> session of the WGSR on amendments to the Rules of Procedure that could potentially be adopted by consensus by the Executive Body, as required by the current rule 33. Note, however, that the EU and its Member States cannot yet take a final position on amendments to the Rules of Procedure during 62<sup>nd</sup> session of the WGSR and that we defer our final judgment on a possible decision on amendments to the Rules of Procedure to the next session of the Executive Body.