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EXECUTIVE BODY FOR THE CONVENTION ON
LONG-RANGE TRANSBOUNDARY AIR POLLUTION

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(Geneva, 12 –15 December 2005)
Item 7 of the provisional agenda

THE EIGHTH REPORT OF THE IMPLEMENTATION COMMITTEE

Addendum

**III. IN-DEPTH REVIEW OF COMPLIANCE BY PARTIES WITH THE
PROTOCOL ON POPs**

1. As requested by the Executive Body in its workplan (ECE/EB.AIR/83/Add.2, annex XIII, item 1.2), the Implementation Committee has continued and completed its in-depth review of compliance by the Parties with the 1998 Protocol on POPs, including their national emission obligations. For this purpose, it used as a basis the emission data reported by Parties to EMEP in the 2005 reporting round, and the responses to the questionnaire for the 2004 Review on Strategies and Policies. The Protocol entered into force for Cyprus on 1 December 2004 and for Latvia on 27 January 2005. These two countries, therefore, did not respond to the

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questionnaire regarding the POPs Protocol. The Protocol entered into force for Hungary on 6 April 2004, i.e. after the reporting deadline of 31 March 2004. All of these three countries were, nevertheless, invited by the secretariat to provide information on the Protocol for the in-depth review. Cyprus responded on 30 March 2005 and Hungary provided information with follow-up details on 15 July 2005. No response was received from Latvia. Estonia, for which the Protocol entered into force on 9 August 2005, was not included in the review. Although the Committee reviewed the information from Cyprus and Hungary, it did not include Cyprus, Latvia or Hungary in its assessment. The Committee limited its review to the obligations it had identified for priority review (EB.AIR/2004/6/Add.1, Chap. III, para.36). The reporting obligations of Parties under article 9 and the obligation under article 3.8 to develop and maintain emission inventories for substances listed in Annex III are dealt with separately in chapter II of this report.

2. At its fifteenth and sixteenth meetings, the Committee carefully considered the information available. It acknowledged the large amount of work carried out by the secretariat and various members of the Committee to prepare the necessary documentation for its review.

3. When considering sections A to E and H to J below, it should be borne in mind that four of the Parties to the Protocol to which the obligation in question applies (Iceland, Liechtenstein, Luxembourg and Romania) did not respond to the questionnaire or otherwise report on compliance with the obligation in question. Due to their failure to report under article 9, para. 1 (a), the Committee was unable to evaluate whether they had complied or not complied with their obligation.

A. Compliance with article 3, paragraph 1 (a)

4. Article 3, para.1(a), of the Protocol requires Parties, except where specifically exempted in accordance with article 4, to eliminate the production and use of the substances listed in annex I in accordance with the implementation requirements specified therein.

5. The secretariat did not receive any information concerning an exemption as specified in article 4, para. 3.

6. So far, no Party has made any statement upon signature, ratification, acceptance, approval or accession, concerning further use or production as described in the column 'Conditions' of Annex I to the Protocol.

7. The Committee concluded from the responses to the 2004 questionnaire on strategies and

policies, in particular the responses to question 29, as well as from additional written information received from the Parties, that 15 of the 19 Parties assessed for this in-depth review appeared to be in compliance with this obligation.

B. Compliance with article 3, paragraph 1 (b) (i)

8. Article 3, para. 1 (b) (i), requires Parties to take effective measures to ensure that, when the substances listed in annex I are destroyed or disposed of, such destruction or disposal is undertaken in an environmentally sound manner, taking into account relevant international regimes governing the management of hazardous waste, and in particular the Basel Convention.

9. The Committee concluded from the responses to the 2004 questionnaire on strategies and policies, in particular the responses to question 30, as well as from additional written information received from the Parties, that 15 of the 19 Parties assessed for this in-depth review appeared to be in compliance with this obligation.

C. Compliance with article 3, paragraph 1 (b) (iii)

10. Article 3, para. 1 (b) (iii), requires Parties to take effective measures to ensure that the transboundary movement of the substances listed in annex I is conducted in an environmentally sound manner, taking into consideration applicable international regimes governing the management of hazardous waste, and in particular the Basel Convention.

11. The Committee concluded from the responses to the 2004 questionnaire on strategies and policies, in particular the responses to question 32, as well as from additional written information received from the Parties, that 15 of the 19 Parties assessed for this in-depth review appeared to be in compliance with this obligation.

D. Compliance with article 3, paragraph 1 (c)

12. Article 3, para. 1 (c), requires Parties, except where specifically exempted in accordance with article 4, to take effective measures to restrict the substances listed in annex II to the uses described, in accordance with the implementation requirements specified therein.

13. The secretariat did not receive any information concerning an exemption as specified in article 4, paragraph 3.

14. The Committee concluded from the responses to the 2004 questionnaire on strategies and

policies, in particular the responses to question 33, as well as from additional written information received from Parties, that 13 of the 19 Parties assessed for this in-depth review appeared to be in compliance with this obligation.

15. France provided information but its response was unclear and the Committee was unable to evaluate its compliance with this obligation. With regard to Germany, Lindane (in wood preservative; apparent lack of restriction to professional remedial and industrial treatment) seems not to be in agreement with annex II of the Protocol; Germany appeared, therefore, not to be in compliance with this obligation.

E. Compliance with article 3, paragraph 3

16. Article 3, para. 3, requires Parties, for the substances listed in annexes I, II and III, to develop appropriate strategies for identifying articles still in use and wastes containing such substances, and to take appropriate measures to ensure that such wastes and articles, upon becoming wastes, are destroyed or disposed of in an environmentally sound manner.

17. The Committee concluded from the responses to the 2004 questionnaire on strategies and policies, in particular the responses to question 34, as well as from additional written information received from Parties, that 13 of the 19 Parties assessed for this in-depth review appeared to be in compliance with this obligation.

18. France and Germany provided information, and Germany additional information, but the responses were unclear and the Committee was unable to evaluate their compliance with this obligation.

F. Compliance with article 3, paragraph 5 (a)

19. Article 3, para. 5 (a), requires Parties to reduce their annual emissions of the substances listed in annex III from the level of emissions in a reference year set in accordance with that annex by taking effective measures, appropriate in their particular circumstances.

20. Assessment of Parties' compliance with this obligation will be relevant to future reviews but was not, the Committee concluded, relevant to this review as the Protocol did not enter into force until 23 October 2003. Nevertheless, the Committee noted that many Parties did in fact implement this provision voluntarily with respect to 2003. Only a few Parties appeared to have met their emission reduction obligations for all three of the substances listed in annex II in 2003. However, many more Parties appeared to have met their emission reduction obligation with regard to at least one of the substances, PAH, dioxins/furans and/or HCBs.

G. Compliance with article 3, paragraph 5 (b) (i)-(iv)

21. Article 3, para. 5 (b) (i)-(iv), requires Parties, no later than the timescales specified in annex VI, to apply, taking into account annex V: (i) BATs to each new stationary source within a major stationary source category for which annex V identifies BATs; (ii) limit values at least as stringent as those specified in annex IV to each new stationary source within a category mentioned in that annex. Alternatively, a Party may apply different emission reduction strategies that achieve equivalent overall emission levels; (iii) BATs to each existing stationary source within a major stationary source category for which annex V identifies BATs, insofar as this is technically and economically feasible. Alternatively, a Party may, apply different emissionreduction strategies that achieve equivalent overall emission reductions; and (iv) limit values at least as stringent as those specified in annex IV to each existing stationary source within a category mentioned in that annex, insofar as this is technically and economically feasible. Alternatively, a Party may apply different emission reduction strategies that achieve equivalent overall emission reductions.

22. The obligations under (i) and (iii) will come into force on 23 October 2005 or later depending on the individual Party's date of ratification, and those under (ii) and (iv) on 23 October 2011 or later. Assessment of Parties' compliance with this obligation was not, therefore, relevant for this review.

23. Nevertheless, it should be noted that many Parties voluntarily implemented both para. 5 (b) (i) and para. 5 (b) (iii).

H. Compliance with article 3, paragraph 5 (b) (v)

24. Article 3, para. 5 (b) (v), requires Parties, no later than the timescales specified in annex VI, to apply effective measures to control emissions from mobile sources, taking into consideration annex VII.

25. Annex VI does not provide specific timescales for mobile sources. Solely for the purpose of its current evaluation, the Committee took the approach that this subparagraph is effective upon the date of entry into force of the Protocol.

26. The Committee concluded from the responses to the 2004 questionnaire on strategies and policies, in particular the responses to question 36, as well as from additional written information received from the Parties, that 15 of the 19 Parties assessed for this in-depth review appeared to be in compliance with this obligation.

I. Compliance with article 3, paragraph 8

27. Article 3, para. 8, requires Parties to develop and maintain emission inventories for the substances listed in annex III, and to collect available information relating to the production and sales of the substances listed in annexes I and II, for those Parties within the geographical scope of EMEP, using, as a minimum, the methodology and the spatial and temporal resolution specified by the Steering Body of EMEP, and, for those Parties, outside the geographical scope of EMEP, using as guidance the methodologies developed through the work plan of the Executive Body. Parties are required to report this information in accordance with the reporting requirements set out in article 9 of the Protocol.

28. In its report to the Executive Body in 2004, the Committee noted that, in order for it to carry out a complete review of compliance with the obligation under this article, as well as under article 9, paras. 1 and 2, various decisions would first have to be made under those articles by the Executive Body or the EMEP Steering Body (EB.AIR/2004/6/Add.1, para.38). As no such decisions have been made, it was not possible for the Committee, at this stage, to carry out a complete review of compliance with the obligation under article 3, para. 8.

29. The Committee observed that question 37 of the 2004 questionnaire only relates to information pertaining to production and sales of substances listed in annexes I and II and not to emission inventories for substances listed in annex III. The obligation on maintaining emission inventories is linked to the reporting of data and the emission reduction obligation under article 3, para. 5 (a).

30. The Committee concluded from the responses to the 2004 questionnaire on strategies and policies, in particular the responses to question 37, as well as from additional written information received from the Parties, that 15 of the 19 Parties assessed for this in-depth review have provided information relating to production and sales of annex I and annex II substances.

J. Compliance with article 7, paragraph 1

31. Article 7, para. 1, requires Parties, no later than six months after the entry into force of the Protocol, to develop strategies, policies and programmes to discharge its obligations under the Protocol.

32. The Committee concluded from the responses to the 2004 questionnaire on strategies and policies, and in particular the responses to question 28, as well as from additional information

received from Parties, that 15 of the 19 Parties assessed for this in-depth review appeared to be in compliance with this obligation.

K. Conclusion

33. Most Parties that reported appeared to be in compliance with the obligations reviewed. In a number of cases, however, because no information or only partial information had been submitted, it was not possible for the Committee to review their compliance. In reaching this general conclusion, the Committee was mindful that the purpose of its in-depth reviews was to assess the general “state of health” of the Protocol in question rather than to find whether particular Parties were or were not in compliance with their obligations. Moreover, it noted that in the case of the present review, the POPs Protocol had been in force for less than two years and that a number of Parties lacked awareness of, or had technical difficulty meeting, the new requirements and, as a consequence, were slow to provide the secretariat with answers to the questions put to them.

IV. IN-DEPTH REVIEW OF COMPLIANCE BY PARTIES WITH THE PROTOCOL ON HEAVY METALS

34. At its twenty-second session, the Executive Body requested the Committee to conduct, over the period 2005-2006, an in-depth review of compliance by Parties with their obligations under the Protocol on Heavy Metals.

35. To this end, the secretariat provided the Committee with a draft table summarizing, in two categories, the obligations of the Parties to the Protocol: (i) obligations for priority review and (ii) other obligations. The table also listed those provisions of the Protocol that were associated with each obligation, as well as the information sources on which the review would be based.

36. The Committee reviewed the table and, subject to deleting the obligations in category (ii), agreed that it would proceed in 2006 with an assessment of compliance by the Parties with the obligations in category (i) and report its conclusions to the Executive Body at its twenty-fourth session in 2006 as instructed. The obligations in category (i) are: article 3, para. 1, reduction of emissions; article 3, para. 2 (a), application of BAT; article 3, para. 2 (b), application of limit values to new major stationary sources; article 3, para. 2 (c), application of BAT to existing major stationary sources; article 3, para. 2 (d), application of limit values to existing stationary sources; article 3, para. 3, application of product control measures; article 3, para. 5, emission inventories; article 5, para. 1, development of strategies, policies and

programmes; article 7, para. 1 (a), reporting on measures; and article 7, para.1 (b), reporting on emissions.

V. COOPERATION WITH OTHER BODIES UNDER THE CONVENTION AND OUTSIDE

37. In 2004, the Committee asked the secretariat to keep it informed of further developments in relation to improving the quality of the emission data reported by Parties. Accordingly, the secretariat provided information on the work of the EMEP Steering Body and its Task Force on Emission Inventories and Projections to develop an inventory review and improvement programme. Proposals from the Task Force would be presented to the Steering Body in September 2005. Consideration was being given to formalizing the procedures through an Executive Body decision to establish a review team of experts to perform a more detailed review process.

38. The Committee thanked the secretariat for its report. It stressed the need for high-quality data if its own work was to be carried out effectively. It noted it had always used the latest officially submitted data for its reviews of compliance. Parties should aim to ensure consistency between the data submitted to EMEP and those provided to the Implementation Committee for the purposes of compliance review. It invited the secretariat to continue to keep it informed of developments in this area of work.

39. During the year the secretariat drew the attention of the Committee to various other matters that related to its work, including the decision of the European Court of Justice on compliance by France with its obligations under the Land-based Sources of Pollution Protocol to the Barcelona Convention (C-239/03 of October 2004) and preparation of input for the Commission on Sustainable Development on issues related to air pollution and climate change. In addition, Mr. Kuokkanen provided information about the workshop on ensuring compliance with Multilateral Environmental Agreements, held at the Max Planck Institute in Heidelberg, Germany, from 11 to 13 October 2004, and about the workshop on Dispute Resolution, Compliance Control and Enforcement of International Obligations, held at the University of Kiel, on 21 and 22 January 2005. He made a presentation on the Committee's work at both workshops.

VI. OTHER BUSINESS

40. The secretariat drew the Committee's attention to the efforts being made to streamline Convention documentation in accordance with the guidelines circulated by the Secretary-

General of the United Nations and as requested by the Executive Body at its twenty-second session. The Committee noted the need to focus on substantive text and on conclusions and recommendations and to avoid repetition of text where possible. In this respect, it agreed henceforth to include a draft workplan in its annual reports to the Executive Body (see paras. 44 and 45 and annex below). The Executive Body could then adopt the workplans, with or without amendments. The secretariat noted future possibilities for making use of the Internet to disseminate information such as decisions and workplans that were currently part of the Executive Body report.

41. The Committee emphasized the need for documentation to be circulated in good time before meetings. The secretariat agreed on the importance of setting effective deadlines and for documents to be circulated as soon as they became available.

42. The secretariat informed the Committee of the preparation by consultants of three implementation guides, one for each of the three most recent protocols to the Convention. Work on the three guides was nearing completion.

43. The Committee took note of the draft decision that was being placed before the EMEP Steering Body on emission data reporting under the Protocol on Heavy Metals, Protocol on POPs and the Gothenburg Protocol. It was anticipated that the Steering Body's decision would be endorsed by the Executive Body at its twenty-third session. Certain elements of the Emissions Reporting Guidelines for estimating and reporting emission data would, as a consequence, become legally binding. The Committee agreed that its work in 2006 would take that into account, assuming the decisions were adopted.

VII. FURTHER WORK

44. The Implementation Committee considered and approved its draft workplan for 2006 (see annex) and agreed to submit it to the forthcoming session of the Executive Body.

45. It tentatively scheduled its seventeenth meeting for 5-7 April 2006 and its eighteenth meeting for 24-26 July 2006. Both meetings would be held in Geneva unless the Committee receives an invitation to hold its seventeenth meeting at another location.

Annex

Draft workplan for 2006

1.2 COMPLIANCE REVIEW

Description/objectives: Review of compliance by the Parties with their obligations under the Protocols to the Convention.

Main activities and time schedule: Any submission or referral made under paragraph 3 (b) of the Committee's functions will be dealt with as a priority and the Committee may have to adjust its workplan and time schedule accordingly. In this regard, the Committee will continue to review the progress made by the Parties in response to decisions taken by the Executive Body based upon the Committee's recommendations as well as the need for possible additional measures for dealing with non-compliance on a case-by-case basis. The Implementation Committee will also evaluate the reporting by the Parties on their emissions data and their strategies and policies, including the reporting on technology-related obligations. It will continue and complete its in-depth review of compliance by the Parties with the 1988 Protocol on Heavy Metals; it will also prepare a timetable and outline a plan for an in-depth review of compliance with the obligations in the 1999 Gothenburg Protocol that are already in operation. The Committee will continue its dialogue with appropriate bodies and experts. It will also continue to consider, as appropriate, compliance issues related to obligations in the protocols that are not subject to specific reporting requirements, such as provisions dealing with research and monitoring.

- (a) The seventeenth meeting of the Implementation Committee will be held, tentatively, in Geneva, 5-7 April 2006;
- (b) The eighteenth meeting of the Implementation Committee will be held, tentatively, in Geneva, 24-26 July 2006;
- (c) The ninth report by the Implementation Committee will be submitted to the Executive Body at its twenty-fourth session.