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UNITED NATIONS FRAMEWORK CONVENTION ON CLIMATE CHANGE

AD HOC GROUP ON THE BERLIN MANDATE
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Item 3 of the provisional agenda

IMPLEMENTATION OF THE BERLIN MANDATE

Comments from Parties

Addendum

Note by the secretariat

In addition to the submissions already received (see FCCC/AGBM/1997/MISC.2), a further submission has been received from the Netherlands (on behalf of the European Community and its member States).

In accordance with the procedure for miscellaneous documents, this submission is attached and is reproduced in the language in which it was received and without formal editing.

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PAPER NO. 1: NETHERLANDS
(on behalf of the European Community and its member States)

COMMENTS ON THE AGBM FRAMEWORK COMPILATION REPORT (FCCC/AGBM/1997/2, and addendum) BY THE NETHERLANDS PRESIDENCY ON BEHALF OF THE EUROPEAN COMMUNITY AND ITS MEMBER STATES

I. INTRODUCTORY ELEMENTS' (para 10-26)

Preamble (para. 10 - 14)

With respect to the section on the preamble the EU notes that several Parties have made suggestions with respect to the language to be used in the preamble, like references to the IPCC SAR, adverse impacts on developing countries and special positions of countries with economies in transition. Also it has been suggested to cross refer to selected provisions from the Convention.

The EU feels that a general reference to the Convention as a whole and the Berlin Mandate would be the best way to introduce the Protocol. However, in practice a preamble text should be pieced together only after the main body of the legal instrument has been discussed and - where already possible agreed upon. Therefore, the EU suggests to defer the consideration of the section to a later stage.

Definitions (para 15 - 19)

With respect to the definitions the EU wishes to state that at this stage of our discussions it is premature to finalize the section on definitions, since the main body of the text has not been discussed and agreed upon. The EU agrees that many of the texts in para 15.1. - 15.10, 17.1 - 17. 3, 18. 1 18.10, 19.1 - 19.2 may in the end have to be included in the future section on definitions.

The EU feels that the definitions in para 16.1-16.6 are directly related to the substance of a specific QELRO proposal of a Party and therefore will need to be discussed in the context of these specific proposals before being addressed by the group which has been set up to deal with Part I. The same applies to the un-elaborated proposals in para 17.4 and 17.5. Definitions 19.4 and 19.5 are also of a technical nature, and might also better be discussed elsewhere in the first instance.

Objectives (para 20 - 23)

The EU likes to emphasize that article 2 of the Convention refers to 'the ultimate objective of this Convention and any related instruments' . Therefore according to the EU there should be no need to discuss new language with respect to the objective of the protocol. The EU suggests to delete para 20 23 and instead simply cross refer to article 2 of the Convention.

Principles (para 24 - 26)

With respect to the section on principles the EU has the same position as on the section on objectives. The Convention contains in para. 3 the principles to guide Parties achieving the objective. No need exists to come up with new principles. In this respect the EU is inclined to agree with the position of the Russian Federation in para 26, although further clarification from the Russian Federation on what is meant in such para 26 by 'statements of the Convention' would be helpful.

Considering the present principles in the Convention the EU suggests to delete para 24 and 25 - which also deal with topics which might also be better discussed elsewhere in the first instance - and instead simply to cross refer to the principles in article 3 of the Convention.

II. STRENGTHENING THE COMMITMENTS IN ARTICLE 4.2(a) and (b)

A. Policies and measures (para 27-50 and Annexes)

Guiding commitments and guiding objectives (para 27 - 37)

The Berlin Mandate and the Geneva Ministerial declaration clearly indicate that the outcome of the negotiations on a legally-binding protocol or another legal instrument should contain commitments regarding policies and measures including appropriate sectors and areas.

The EU attaches considerable importance to the inclusion of legally binding and other policies and measures in the protocol. To this end it has indicated in its submission (para 33.1 to 33.4) that Annex X Parties (countries that are members of the OECD including recent new entrants and countries with economies in transition) shall adopt and implement policies within national and regional programmes in key areas. These policies and measures can be characterised as belonging to either Annex A (common policies and measures) or Annex B (coordinated policies and measures) with those marked with an asterisk having priority. The remaining policies and measures submitted previously would be considered as belonging to Annex C (inclusion in national programmes).

The submissions presented by France in (para 29) follows the approach taken by the EU and in the interest of simplifying the draft protocol that should emerge from the Chairman's compilation document the submission of France could be dropped.

The submission of Switzerland expresses support for the EU position. The submission of New Zealand contained in para 34 also states that common action in certain areas may be appropriate. The AOSIS countries proposal also calls for certain measures to be co-ordinated in a co-ordination mechanism in which we will comment in more detail under Section VI on institutions and processes.

Other submissions in particular those from Poland and the Russian Federation either call for menu approach or the establishment of general objectives. While we want to emphasize again that we prefer the concept of common and coordinated measures for all Annex X Parties to the menu approach we recognize elements in these submissions which are close to our thinking.

Para 30(a) replicates just the Berlin Mandate while para 30(b) and 32 address issues which are dealt with in a separate chapter under Section II.C. Similarly we think that the idea expressed in para 31 should be dealt with more appropriately under Section III, review of commitments.

The proposal from Australia contained in para 28 does not add to what is already laid down in Article 4.1(b) of the Convention, but might rather weaken this provision. However we think that the idea of performance indicators is an interesting one and we want to draw your attention to the fact that a similar concept is expressed in the EU submission on Section IV on Article 4.1.

Before commenting on the para dealing with specific policies and measures let me conclude by saying that we are of the opinion that there is no need for the inclusion of special guiding objectives for policies and measures.

Regarding specific policies and measures contained in (para 38-47) the EU notes that unfortunately two policies and measures have not been marked with an asterisk (*) in the framework compilation, while they should have been indicated as such (para 38.3a (Energy efficiency standards, labelling and other product-related measures for common household appliances etc.) and para 38.10c (Fluorocarbons and SF_6: international cooperation in the development of policies and measures with sector organizations).

The EU proposal contained in para 38 is the most elaborated of the submissions in the documents in front of us. It has submitted at AGBM5 a shortened priority list of policies and measures, based on the eleven papers identifying over 200 policies and measures it previously presented for consideration. These policies and measures are categorised according to the Annex structure it has elaborated in the Protocol structure. The EU text provides a sound and flexible basis for meeting the objectives of the Berlin Mandate and the focus in the negotiation should now be on the common and co-ordinated polices and measures to be contained in Annexes A and B. The submissions of France and Germany could be accommodated in the EU position.

In this context, the options proposed by the Chairman as regards the Annexes -para 250.1 to 250.4 do not correspond to the framework proposed by the EU. However, the EU warmly welcomes the fact that the Chairman endorses the EU view that the Protocol should contain a mandatory element in relation to policies and measures.

A number of Parties, Iceland (para 41), New Zealand (para 44), Norway (para 45) and Switzerland have submitted proposals that could integrate into the format provided by the EU

submission. The position tabled by Japan (para 43.1-43.5) lists a number of policy areas. As the EU understands it, Annex I countries would be required to adopt at least one policy and measure for each policy area. Progress in achieving these objectives will be based on agreed indicators and each Party will adopt voluntary goals measured on the basis of these indicators as mentioned above the EU prefers common and coordinated action on voluntary goals.

It must be recognised that some developed-country Parties, notably the USA, have not included binding commitments to policies and measures in their submissions. The EU, while defining more clearly its priority list of policies and measures is convinced that inclusion of policies and measures is essential to ensure that the Protocol fully encompasses the remit of the Berlin Mandate, as called for by the Geneva Ministerial Declaration.

Differentiation (Policies and Measures) (para 48-51)

The main submission on this issue is from the group of countries with economies in transition who wish to have a separate annex to the protocol or another legal instrument. While the EU recognises the specific problems of the countries in transition it believes that their circumstances can be taken into account in the Protocol structure it has advanced and not in a separate annex.

B. QELROs (para 51-117)

Guiding objectives (para 51-55)

The EU believes that Parties should develop a common recognition of the GHGs concentration levels thought likely to result in dangerous anthropogenic interference with the climate system as defined in Article 2 of the Framework Convention on Climate Change. In this context, the EU recalls that, according to the IPCC SAR, stabilisation of atmospheric concentrations of CO2 at twice the pre-industrial level, i.e. 550 ppm, will eventually require global emissions to be less than 50% of current levels of emissions; such a concentration level is likely to lead to an increase of the global average temperature of around 2 degrees C above the pre-industrial level. The EU believes that global average temperatures should not exceed 2 degrees above pre-industrial level and that therefore concentration levels lower than 550 ppm CO2 should guide global limitation and reduction efforts.

The EU cannot accept para 53.

The EU believes furthermore that para 54.2 does not belong in Guiding Objectives but is rather a part of level and timing/emissions budgets and should be moved to this section.

Legal character (para 56-61)

The EU reiterates its support for the language of the Geneva Ministerial Declaration calling for quantified legally-binding objectives for emission limitations and significant overall

reductions within specified time frames for Annex I Parties.
In this context, the EU notes that this would not be the only legally binding provision in the Protocol and refers in this regard to its proposal on policies and measures. Language along the lines of para 61 could in our view be included in a future preamble to the Protocol.

Level & timing/emission budgets (para 75-91)

The EU continues to support the principles outlined in present para 80 but would like to emphasize a few points. The EU supports the need for QELROs within the time frames 2005 and 2010 as a preferable shorter time process, and 2020 as a possible longer term perspective. The short and medium term objectives will affect the levels of reduction required to be achieved over the longer term also, significantly affecting the scope for investment decisions made at any time in the future. Stabilisation as defined by Article 2 of the Framework Convention on Climate Change could be achieved by various emission paths within clear limits if overall objectives are to be met. It must be clearly understood that insufficiently ambitious short-and medium-term QELROs will require much greater reductions later in order

to meet the ultimate objective of the Framework Convention on Climate Change and could jeopardize the attainment of that objective. To follow the precautionary principle, early action must be applied.

Emission budgets (para 85 - 91)

The EU has studied with interest para 85.2-85.6 and 90.1-90.6, but wants to emphasize that it cannot consider them in detail until their timing and reduction objectives have been clarified.

Regarding 90.1, the EU finds the idea of emission budgets interesting, but wants to underline that such budget periods should not postpone the time when commitments become legally binding and can be monitored. We clearly oppose the idea of borrowing mentioned in 90.2 of this section and we do not wish to see this concept included in the Protocol. In a Convention where the focus is on reducing the environmental burdens for next generations, the idea of borrowing emissions from those generations leans towards both unfairness and un-sustainability.

Base years (para 86)

While the EU maintains 1990 as a base year, it notes the idea of giving flexibility to Parties with Economies in Transition as reflected in para 86. Base years other than 1990 for these Parties should be stipulated in Annex Y. We intend to return to this point later.

Flexibility (para 103 - 107)

Firstly regarding trading, whilst the EU is open to further consideration and development of an emissions trading mechanism to increase flexibility in meeting post-2000 commitments, there are a large number of key issues which would need to be addressed and resolved

satisfactorily before agreement could be reached, and very little time in which to do so. In particular the EU considers that the issue of monitoring and verification, whilst not solely an issue for trading, is a crucial one.

The EU is also concerned that emissions trading should not be used as a means of avoiding action domestically to mitigate climate change as required under Article 4.1 of the Convention. Neither should trading be used as an excuse to delay action indefinitely, by allowing borrowing (as proposed by the US). Trading should not be seen as an alternative to the development of policies and measures as set out in the EU's protocol proposal.

In light of the above the EU feels it is highly improbable that an acceptable trading system could be elaborated and agreed upon in time for CoP3.

Regarding joint implementation, the EU believes that JI between Annex X Parties, as set out in the EU' s proposal (in para 109.1) and subject to appropriate rules being part of the Protocol, could be a valuable means of meeting a proportion of those Parties' commitments. It could also be a useful step towards the involvement of all Parties and possibly the development of a trading scheme. However the EU does not believe that it would be appropriate to agree at COP3 upon joint implementation between all Parties , before a decision has been taken on the pilot phase of activities implemented jointly.

On this point the EU wants to draw the attention to the fact that the text contained in paragraph 109.2 of document FCCC/AGBM/1997/2 is not in accordance with the text of the EU's original submission of 15 January and should read: "The Conference of the Parties shall take decisions regarding criteria for joint implementation **with other Parties** at a future session".

C Possible impacts on developing countries of new commitments in the new instrument/economic injuries sustained by developing countries (para 118-123 and para 31-32 of the Addendum).

The EU has taken good notice of all the proposals on this important subject in para 118-123 and para 31-32 of the addendum, made by Non-Annex I Parties. The EU takes the subject of impacts on developing countries, that might arise from the adverse effects of climate change and/or the impact of the implementation of response measures very serious. It also recognises the situation of Parties whose economies are highly dependant on income generated from the production, processing and consumption of fossil fuels and associated energy-intensive products. Art.4.8 and 4.10 of the Convention deal with these issues and the Berlin Mandate makes specific reference to these articles.

The approach chosen to deal with these issues in most of the proposals made, namely to establish a form of financial liability towards Parties that may see changes in their revenues from fossil fuels exports and to establish a compensation mechanism to compensate possible losses, is however not acceptable to us.

The EU would recommend to follow a different approach, that may include the following elements:

a) Increase the transparency of the process that will lead to decisions on the actions to be included in the protocol and their implementation by making available information through the national communications under the Convention and the protocol. In that context information such as the nature of policies and measures undertaken, changes in energy balances over time, but also the expected impact of climate change itself would be useful. Furthermore, analysis of such impacts will need to be pursued in the context of decision making at international and national level. The IPCC workshop on this issue planned for August in Oslo will be a useful contribution, as has been the case for the round table discussions held at previous AGBM sessions.

b) Explore how mitigation options and internationally agreed or coordinated policies and measures can create opportunities for countries that may face impacts of the implementation of response measures to play a constructive role in the joint effort of all Parties to combat climate change, while strengthening their economic resource base. The EU is aware of some initiatives to do such exploratory studies and welcomes an opportunity to hear more about their results.

D MEASUREMENT, REPORTING AND COMMUNICATION OF INFORMATION (para 124-133)

General observations

The draft text in para 126 tabled by the EU in relation to measurements, reporting and communication of information is designed to integrate with the requirements under Article 12 of the Convention relating to national communications. The EU text, together with additions to the "Guidelines for the preparation of National Communications" to take account of commitments under the Protocol or another legal instrument, provides a sound basis for reporting obligations.

Allowing for the fact that the Japanese and USA proposals reflect their different approaches to QELROs there are substantial similarities between the EU and other proposals. Below we will now comment on these proposals more in detail.

AOSIS (para 124)

In para 124 the AOSIS text is similar in substance to the EU text except for the requirement in the AOSIS proposal (124.2) to indicate how a Party's policies and measures form part of a low cost implementation strategy. As the benefit of such a requirement is not apparent, the EU, subject to further arguments that may be advanced by AOSIS, does not favour it.

The EU would prefer its own approach, but if the AOSIS proposal is to be developed, the EU considers that the provision of full costs and benefits should be "as appropriate". As regards agreement on methodologies, the EU understands the point being made by AOSIS; however, the EU considers the revised Guidelines for Annex I Communications provide sufficient guidance for the present and that further work will be needed to develop them further after the first meeting of the Parties to the Protocol or another legal instrument.

Australia (para 125)

The EU considers that the Australian proposal in para 125 is more appropriate for discussion under Section 2A of the Framework Compilation in the section dealing with policies and measures and refers to the EU proposals in para 33.1.

G77 and China (para 127) and Iran (para 128)

The EU would be concerned that the proposals that the proposals of G77 and China in para 127 and Iran in para 128 do not provide for the advancement of the implementation of the commitments in Article 4.1 of the Convention. In particular the proposals would prohibit the development of In-Depth Reviews for developing country Parties and could not provide a sufficient basis for strengthening the In-Depth Review process for Annex X Parties. In this regard, the EU recalls its proposals in para 151.2 as amended.

Japan (para 129)

The Japanese text in para 129 reflects its different approach to QELROs and as such it differs from the EU in matters which it requires information to be provided on. The basis on which projections of future emissions should be provided (to the middle of the 21st century is suggested in para 129 (e)), and the purpose for which these projections would be used will need to be elaborated before detailed consideration can be given to the inclusion of such a provision.

The EU reaffirms its preferences for time frames such as 2005, 2010, and possibly 2020 in the Protocol or another legal instrument. It acknowledges that an understanding of the longer horizons would be interesting, if available, but considers that the determination of requirements for the period after 2020 is a matter for review at an appropriate time in the future. In the meantime, the EU considers this proposal is not a matter for inclusion in the text of a legal instrument.

Kuwait and Nigeria (para 130.1 - 130.5)

While para 130.1 (a) and (b) are similar in substance to the EU text, para 130.2 et sequitur impose unnecessary additional requirements in terms of frequency and detail of reporting on developed country Parties. The main objective of this reporting requirement is to identify the effect on fossil fuel and associated product imports from developing countries. The information would be subject to review by the secretariat assisted by a review team drawn

from Parties. Failure by a Party or Parties accounting for 10% or more of GHG emissions to submit information sought would result in lapsing of QELROs. In the EU view, this is a compliance issue and not related to the reporting and communication of information.

The submission of the information sought is in our view not necessary and impracticable. National communications already require the submission of detailed information to allow Parties to estimate the effects of policies and measures. Accordingly EU cannot accept the inclusion of para 130.2 to 130.4 of the Kuwaiti and Nigerian text. However, the EU recognises that there might be elements worthy of further consideration but which then could be discussed within the framework of the present Guidelines for national communications of Annex I Parties and possible revision of the Guidelines. In recognising this, no concession can be implied in relation to the proposals for compensation for economics injuries that may be sustained by developing country Parties contained in Section II.C of the Framework Compilation, including the proposals for compensation for loss of income from exports of fossil fuels and fossil fuel products outlined in para 120.

The provisions for the expiration of the Articles relating to QELROs and policies and measures for all Parties arising out of a failure of Parties representing 10% of developed countries' emissions to submit a communication in any year, or implement policies and measures arising out of the in-depth review process that appear reasonably necessary to achieve the QERLO, are unacceptable to the EU. It should not be possible for the essential provisions of the Protocol or another legal instrument for all developed country Parties to be negated by the acts of omission of a small number of these Parties. It is legally unacceptable and contrary to any provisions of international law that obligations may lapse in the manner proposed. In any event, adequate provisions can be made in the compliance and in the dispute resolution mechanisms to ensure timely presentation of national communications and review and assist, if necessary, any Party in the intensification of the necessary policies and measures.

Switzerland (para 132)

The Swiss proposal in para 132 is in essence the same as the EU proposal.

USA (para 133)

The USA proposal in para 133 reflects its approach to QELROs and large elements of the reporting requirements would only be required for consideration if provision is made for banking and borrowing within and between budgetary periods for emissions. This proposal is relevant to trading and should be discussed in that context.

E. Voluntary application of commitments by non-Annex I Parties (para 134-138)

As indicated in para 135, the EU believes that it is necessary to allow for some or all commitments for Annex I Parties regarding QELROs and policies and measures under the

Protocol to be extended to other Parties on the basis of voluntary acceptance, as also proposed on the AOSIS Protocol text (para 134). They would do so in their instrument of ratification, acceptance, approval or accession, or at any time thereafter, notify the Depositary that it intends to be bound by those commitments. The Depository shall then inform the other signatories and Parties of any such notification,

The US proposal (para 138.1-138.2) includes the voluntary acceptance of obligations as well. However, its approach does not allow the flexibility included in the EU approach which allows Parties to choose to adopt the full QELRO and/or various policies and measures.

Regarding para 136.1 proposing the voluntary submission of information by Parties not included in Annex I, the EU Draft Protocol (para 135) states that once countries voluntary decide to be bound by policies and measures and/or QELROs, they shall submit an initial communication within 3 years of the entry into force of the Protocol for that Party. This approach is still preferable to that in 136.1.

We do not believe that the proposition in para 136.2 is in line with Article 11 and the Memorandum of Understanding on Modalities for the functioning of operational linkages between the Conference of the Parties and the operating entity or entities of the financial mechanism, agreed at previous sessions. According to Article 11 and the MoU, the COP is not responsible for funding decisions on individual projects but for the overall policy guidance to the financial mechanism. This proposition would foresee individual funding decisions by the COP. It is the task of the financial mechanism to take decisions as described in para 136.2. It goes without saying that the financial mechanism has to ensure that funded projects related to the Convention are in conformity with the policies, eligibility criteria and programme priorities established by the Conference of the Parties.

III. REVIEW OF COMMITMENTS' (para 139-148)

The EU would like to recall that the Geneva Ministerial Declaration requested that: "The instrument should include a mechanism to allow the regular review and strengthening of the commitments embodied in a protocol or another legal instrument". The EU strongly endorses this request as indeed do many other countries and most of the proposals put forward reflect this basic idea.

The EU strongly endorses the request for a review of the adequacy of commitments on the basis of Art. 2 of the Convention, as indeed is reflected in many of her proposals put forward.

The EU has inter alia proposed that the first general review should take place no later than 31 December 2002. In the view of the EU such a date will be appropriate as by that time achievements with respect to current commitments can better be judged. Furthermore the IPCC will issue its 3. Assessment Report at the latest in the beginning of 2001 so this report could be used as a basis for the review.

IV. CONTINUING TO ADVANCE THE IMPLEMENTATION OF EXISTING COMMITMENTS IN ARTICLE 4.1.F (paragraphs 149-164)

A. General elements

The EU agrees with the general thrust of the proposal in **para 149** and wants to draw the attention to the fact that the elements have been further elaborated in the EU proposal.

The EU has revised its proposal in **paras 150 - 151.4** by incorporating some views contained in the proposals from France and the United Kingdom which are now superseded by the new EU proposal. The EU would therefore like to add the following to its previous proposal: - at the end of **para 151.2** add the following: "(g) in respect of national communications (4.1j):

(i) arrangements for in-depth reviews of Annex 1 Parties communications should be strengthened along the lines of the OECD Countries Environmental Performance Reviews (that is including a formal opportunity for ether Parties to ask questions about the review findings);

(ii) in-depth reviews of non-Annex Parties' communications should be introduced along the lines of existing arrangements for Annex I."

- in **para 151.3:** add at the end of indent (ii) the following:

"as well as of measures in sectors largely open to international competition II.

Para 152.1- 152.3

With regard to these paragraphs the EU would like to highlight the following considerations:

- the EU recognizes that continuing to advance existing commitments by developing country Parties is dependant upon developed country Parties meeting their commitments under Articles 4.3, 4.4 and 4.5;

- the EU notes that continuing to advance the implementation of commitments by developing country Parties under Article 4. 1 also depends upon these Parties adopting national strategies and policies to mitigate and adapt to climate change;

- the EU also notes that **para 152.1** contains additional elements to these contained in Article 4.1 and would therefore be beyond the scope of the existing commitments in Article 4.1. The EU refers to its proposals in paragraph 183 that the financial mechanism of the CoP should also be the financial mechanism for the purposes of the Protocol. Consequently the issues raised in **para 152.2** should be dealt with by the existing arrangements of the SBI and SBSTA.

The EU agrees on the content of **para 154.1** which is also contained in para 151.2 of the Framework Compilation. With regard to **para 154.2** the EU believes that it should be considered in the part related to financing.

The EU note with interest the proposal by Switzerland in **para 155** but would prefer to consider such mechanisms in the context of Section II.E of the Compilation.

The EU supports the inclusion of policies and measures in the Protocol but cannot support the US proposal in **para 157.6** as it is limited to countries outside Annexes A and B only.

The same line of thinking applies to **para 157.7** in sofar it is restricted only to non-Annex A and non-Annex B.

With regard to **para 157.8** the EU believes that this para is unbalanced: in fact it introduces a review process for non-Annex I Parties which is even stronger than the review process envisaged for Annex I Parties. The EU believes that this point is better considered in the proposed new para 151.2 (g).

The EU believes that the concepts expressed in **para 158** are already covered in paras 150 and 183 of the Framework Compilation.

B. Technology Transfer

The EU believes that there is no need in having two separate chapters in the issue "Continuing to advance the implementation of existing commitments in art. 4.1.

Para 159

The EU believes that the content of this **para 159** is also treated in para 151.3 of the Framework Compilation.

After an internal EU discussion **para 160** is now superseded and has to be removed from the Framework Compilation.

The EU believes that the content of **paras 161** to **164** is also treated in para 151.3 of the Framework Compilation.

V. EVOLUTION (para 165)

The EU recognizes that in the long term emissions of greenhouse gases from countries not included in Annex I must also be regulated if the long term objective of the Convention is to be met.

The EU is of the view that this should be considered as one element in the first review of the Protocol.

VI. INSTITUTIONS AND PROCESSES (para 166-196)

With regard to the headings A, B, C and D the EU strongly supports the notion of applying a high degree of institutional economy.

A. CoP/MoP, para 166.1 -170.5

All proposals made under this heading generally seem feasible, as they stay in line with traditional law-making. The proposal by the EU, however, by relying on the same CoP for the Protocol as for the Convention, complies with the terms of the chapeau to Art. 7.2 of the Convention. For legal reasons, however, participation in decision-making under the Protocol as well as bureau representation will need to be limited to the Parties to the Protocol.

B. Secretariat, para 171. -175.2

We note with appreciation that all proposals go in the same direction. we believe, however, that the formulation of the proposal submitted by the EU is the most advanced one, as it is written in the legal language necessary when drawing up a multilateral environmental agreement.

C. Subsidiary Bodies, para 176. -180.

Again, the general thrust of ail submissions points towards the two subsidiary bodies serving as the subsidiary bodies to the Protocol. For legal reasons, again, participation in decision-making as well as bureau representation will have to be limited to the Parties to the Protocol. The model proposed by Australia in para 172, according to which the question of participation would be considered in the light of the precise role these bodies were to be given in the instrument, is not acceptable to us.

D. Coordination Mechanism, para 181.1 - 181.4

The EU draft Protocol includes in its Annexes A, B and C comprehensive lists of policies and measures. As stated in para 33.2 of doc. FCCC/AGBM/1997/2, Annex A refers to common measures for industrialized countries, which are mandatory for all Annex X Parties. Moreover, as stated in para 33.3, Parties listed in Annex X shall give high priority to the adoption and implementation of the policies and measures set out in Annex B, and shall work towards early coordination, by applying the guidance set out in that Annex. A process needs to be established to develop such guidance. In that context suggestions for a coordination mechanism seem to go in the right direction. At this stage, however, we doubt whether establishing a coordination mechanism that took the form of a new institution could be reconciled with our strong belief in the need for institutional economy.

E. Financial Mechanism, para 182. - 183.

The proposals both opt for the financial mechanism established under the Convention to serve also the Protocol. The language offered by the EU in para 183, according to which "the financial mechanism defined for the purposes of the Convention as well as the entity or entities entrusted with its operation shall serve as the financial mechanism and entity or entities for the purpose of the Protocol" is in our view a more precise and a more appropriate one to include in a Protocol. We do not believe that approval by the CoP of the Convention would be necessary as such approval would be inherent in the decision to be taken by the Cop when adopting the Protocol.

F-G. Review of Information/Review of Implementation and Compliance and Multilateral Consultative Process, para 184.-190.

First of all, the EU asks that a clear distinction be drawn between "Review of information" and "Review of Implementation and Compliance". To that end, para 184, which obviously has been taken from an earlier EU submission, ought to be deleted as its content is fully reflected in our later proposal as set out in para 189. Furthermore para 186 to 190 should be dealt with under a single heading to be called either "Multilateral Consultative Process" or (to use language of the convention) "Matters with regard to implementation".

Before addressing the issue of implementation and compliance, we would like to comment on para 185.1 and 2 regarding the review of information: a system for reviewing information has been established by the CoP of the Convention by means of Decision 2/CP.l. In order to incorporate such a system into the Protocol regime, CoP I of the Protocol would have to take the stop of expressively endorsing Decision 2/CP.l.

Turning to substance, the EU welcomes the importance attributed and the wide support given to review of implementation and compliance as such. We believe that the creation of a process for the resolution of questions regarding implementation and compliance will be indispensable taking into account the highly regulatory character of the Protocol. This being the case, we would not wish to create any substantive conditionality to Article 13 of the convention, as is suggested under para 188.1. In order not to overload AGBM's agenda, the EU has proposed to leave the detailed design of such a process to the first CoP of the Protocol. The enabling provision of the Protocol should, however, contain a clear and strong mandate to the COP, as formulated by the EU in para. 189.

H. Dispute settlement, para 191. - 196.3

The EU wishes to reiterate that there is no need for a Protocol to contain a separate provision on dispute settlement, as Art. 14 of the Convention applies automatically to any Protocol.

VII. FINAL ELEMENTS' (para 197-241)

A. Decision making, para 197. - 201.

The interpretation given to Art. 17.5 of the Convention by para 200 is unacceptable, as in such case non-Parties to the Protocol would be vested with authority to amend its provisions.

B. Amendments, para 202.1 - 206.

We noted the difference between the numbers necessary to adopt an amendment in the AOSIS and the EU proposals. A higher number however would guarantee a greater degree of acceptance.

For the reasons already stated with regard to the proposal in para. 200, the EU cannot accept the interpretation given to Art. 17.5 of the Convention (para 205.1).

When a Party which has not joined in the adoption of an amendment wishes to ratify it at a later stage, it would be helpful if that Party, prior to depositing its instrument of ratification notified the Secretariat of its intention to ratify. The Secretariat could then inform the Parties of such notification.

C. Relationship with the Convention, para 207.1 - 208.

The EU interprets Art. 7.2 of the Convention as meaning that the CoP of the Convention would also serve as the CoP of the Protocol under the conditions set out in para 168. Moreover the EU proposal outlines very clearly all the cases in which institutions established by the Convention shall serve for the purposes of the Protocol as well. Beyond these institutional linkages there is no need for further guidance as stipulated in para 207.2. to para 208.

D. Adoption and Amendment of Annexes, para 209.1 - 213.

There is not much difference between the proposals of the AOSIS and the EU; the EU proposal however is more explicit than the AOSIS proposal and hence seems to us to be more suitable. For the reasons already stated by us with regard to para. 200, the EU cannot accept the interpretation given to Art. 17.5 of the Convention in para 212.1-3.

E. Right to vote, para 214.1 - 215.3

The issue of adjustments (para 215.3) requires further discussion.

F. Relationship to other Agreements, para 217.

The EU is continuing to consider the implications of this proposal but, as matters stand at present it does not consider that it will be necessary to include a para of this type in the Protocol.

G-H. Depositary and Signature, para 218. - 224.

No comments.

I. Provisional Application, para 225.

It would be open to Parties, whether or not such a provision exists, to apply the instrument provisionally prior of its entry into force and to notify the Depository accordingly, This being so we do not consider that the provision proposed in para 225 is necessary.

J.-K. Ratification, Acceptance,Approval or Accession and Entry into Force, para 226.1 - 234.

A provision like the one included in para 230 cannot be implemented in a legally sound manner; it should therefore not be pursued.

With reference to para 232 we note that the number of ratifications of an international environmental instrument traditionally is among the last items to be decided. The EU therefore would wish to reserve judgement on that matter for a later stage. At the appropriate time we shall be happy to consider any variation on the modalities of entry into force other than by mere numbers, as suggested under para 234.

L.-M. Reservations and withdrawal, para 235. - 239.

The EU believes that the issue addressed in para 238.2 is in any event covered by the rules of international law and notes that such provisions are never included in international environmental agreements.

N Authentic texts

No comments.

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