

Online meeting of the Bureau of the twelfth meeting of the Open-ended Working Group of the Basel Convention (OEWG-12)

Wednesday, 10 June 2020, 5:30– 8:30 p.m. (CEST)

Participants:

Co-Chairs: Ms. Stina Andersson (Sweden) (Technical), Ms. Gillian Guthrie (Jamaica) (Legal)

Vice-Chairs: Mr. Zaigham Abbas (Pakistan) (Technical), Ms. Kristine Vardanashvili (Georgia) (Legal)

Rapporteur: Ms. Hlobisile Sikhosana (Eswatini)

1. Endorsement of the report of the 5 June 2020 Bureau meeting

The Bureau of the twelfth meeting of the Open-ended Working Group (OEWG-12) endorsed the report of its last online meeting held on 5 June 2020, as circulated by the Secretariat on 8 June 2020.

2. Feedback from the regions on arrangements for OEWG-12

The Bureau members exchanged feedback from the consultations held with their respective regions subsequent to the Bureau 5 June meeting on the current arrangements for OEWG-12.

One member reported that her region was supportive of OEWG-12 as currently planned as an online meeting starting on 22 June 2020. To allow participants to prepare for the meeting, the region was flexible to postpone the online meeting as currently foreseen until at the latest beginning of September in order to enable the outcomes of the meeting to still feed into the intersessional processes and allow the timely preparation of documents in the six languages of the United Nations for the next meeting of the Conference of the Parties. The region did not see how postponing the meeting until a face-to-face meeting could be held in 2021 would allow to meet those deadlines. As an alternative to the current format for the online meeting, which combines an online session and an email correspondence procedure, an electronic OEWG-12 meeting by email correspondence procedure only would also be acceptable to the region¹. The region highly valued the consensus approach under the Basel Convention and thought that it was thus crucial that all regions participated in the meeting. It was optimistic that a way forward could be identified through the current ongoing consultations with the regions.

Another Bureau member reported that following clarification of the questions his region had raised on the application of the rules of procedure for meetings of the Conference of the Parties to an online OEWG-12, his region was supportive of the OEWG-12 as currently planned, provided that interpretation was available into all six UN languages and that all regions were supportive of the holding of the meeting.

A third Bureau member stated that her region also had raised questions on the rules of procedure and other legal matters of the meeting, but that it was now, thanks to clarifications provided by the Secretariat, supportive of holding the online OEWG-12 as currently foreseen.

Another Bureau member informed the Bureau that she had held intensive consultations in her region and that her region attributed high importance to the effective participation of all Parties in the work of the OEWG. Due to the current coronavirus disease (COVID-19) pandemic and internet accessibility problems in the region, the region would not be in a position to participate effectively in the meeting. While the region appreciated the solution from the Secretariat to provide support for developing-country Parties and Parties with economies in transition to secure a reliable internet access for the meeting, this would not solve the problem of reliability and in some cases unavailability of internet access in the region. The region was thus not ready to participate in an online meeting. She added that the region was having a similar position in the framework of the Convention on Biological Diversity and the United Nations Framework Convention on Climate Change. Some Parties in the region were additionally concerned that the legality of an online OEWG-12 could be called into question later on and Parties might reject the outcomes of such an online meeting. The region was not either able to participate in a meeting held by email correspondence procedure only, as emails did not work reliably in the region. The region's proposal was to postpone the meeting until a face to face meeting was possible, while the intersessional work would continue in the meantime. If the other regions decided to go ahead with an online meeting, the region would respect that, but would not be in a position to take part in it.

The fifth Bureau member reported that her region had had consultations and had developed a written statement for the attention of the Bureau, which the member read out. The region was of the view that the online meeting

¹ As explained in annex III of the report of the Bureau on its online meeting on 5 June 2020.

of OEWG-12 as currently planned should be postponed to a later date and according to details to be agreed with the other regional groups. The region furthermore favoured an OEWG by email correspondence procedure only, along the lines of the elements set out in the annex III of the report of the Bureau on its online meeting on 5 June 2020. She added that at least one country in the region had indicated that it was still conducting internal consultations on this option. The region furthermore considered that the time period for receiving comments from Parties on draft decisions through the email correspondence procedure should be extended from 48 hours to 72 hours.

In the ensuing discussion following reports from all the bureau members with respect to their regions' positions, one Bureau member further mentioned that her region was concerned about not holding an OEWG, or not holding it early enough to allow for input to be provided to the meeting documents to be prepared for the fifteenth meeting of the Conference of the Parties. In response, the Bureau member from the region who suggested that a postponement until a face to face meeting was possible, responded that her region saw no reason not to postpone the meeting. This could imply that other processes, including the fifteenth meeting of the Conference of the Parties to the Basel Convention, had to be postponed accordingly. Invited to provide clarifications on the convening of the fifteenth meeting of the COP, the Secretariat explained that the three meetings of the conferences of the Parties to the Basel, Rotterdam and Stockholm conventions were intrinsically linked, for example through the fact that joint budgets for the three conventions had to be adopted. He added that the Secretariat had encountered serious challenges to identify and secure the two-week period in July 2021 for the meetings to be held and therefore cautioned against looking at postponing the meetings, which was in any case not the mandate of the OEWG Bureau.

In response to questions raised by a Co-Chair, the Secretariat clarified that the intersessional working groups, expert working groups and other subsidiary bodies currently carrying out work intersessionally could continue doing so without a mandate from the OEWG, as they had a mandate from the last meeting of the Conference of the Parties. These groups however would not have benefited from input from a wider stakeholder group as provided by the OEWG. These groups could however consider collecting input from Parties and observers on their own initiative in case OEWG-12 was not taking place in time to provide input to their work. However, for some topics on the agenda of OEWG-12, no working groups were set up and there was thus a risk that no progress or discussions ahead of the next meeting of the Conference of the Parties would take place on those particular items.

Related to the concerns of the legality of an online meeting, the Senior Legal Officer explained that the rules of procedure for meetings of the Conference of the Parties did not require meetings to be face to face, and applied equally to online meetings. She also mentioned that the Basel Convention had a long-standing practice of having its subsidiary bodies and intersessional working groups meet online and work by electronic means. In some cases, online meeting arrangements were mentioned specifically by the Conference of the Parties in its decisions, while in other instances, the subsidiary body had taken upon itself to meet online. While the interpretation of the Convention and the rules of procedure were a prerogative of the Parties to the Convention, the Secretariat felt that the proposal to hold OEWG-12 by electronic means had been thoroughly reviewed and found to comply with all legal requirements. One Bureau member added that this information had been provided in annex II to the report of the Bureau on its online meeting on 5 June 2020.

In response to a question relating to how a quorum would be established during an electronic meeting, the Senior Legal Officer explained that legal presence at the meeting was determined through a valid nomination letter of the representatives' Government. During an online meeting, the "physical" presence would be assessed using the presence at the online session as individuals would need to be electronically authenticated to join the session. In a meeting with email correspondence procedure only, the "physical" presence would be determined by representatives providing a specific email address that was valid and functioning, which could be assessed and agreed upon prior to the meeting. The Secretariat had and was in contact with other UN bodies running meetings by email correspondence procedure to learn from their experience on the matter.

In reaction to this explanation, one Bureau member asked what would happen if a representative lost connectivity in the course of the meeting and how the quorum would then be evaluated. The Senior Legal Officer explained that, at meetings of the Basel, Rotterdam and Stockholm conventions, the quorum was usually presumed to be met but that, if so requested by a Party at a given point in time of the meeting, it would be verified. She said that the quorum for an OEWG meeting was the presence of one fourth of the Parties. The Executive Secretary added that participants in addition to the online presence would also have up to 48 or 72 hours (depending on the timing chosen) to react to the proposed adoption of draft decisions. It was not expected that Parties would be online throughout the full two-week period of the meetings, but that at some point during those 72 hours their representative would have a possibility to react by email to the proposed draft decision. Furthermore, the Secretariat would be monitoring the connections and would endeavour to reconnect anyone who went offline, as it often happened even in regions with good connectivity.

In response to a question from a Co-Chair, the Senior Legal Officer explained that during a meeting run by email correspondence procedure only, following the opening of the meeting by the co-chairs by email, Parties would

be invited to adopt the meeting agenda and agree on the arrangements for the organization of work by email. The Parties would then have a determined amount of time, for example 48 or 72 hours, to react on those matters. She added that the provisional agenda was tailored to the work programme of the OEWG for 2020-2021 as adopted by the COP, and that the mandate of the OEWG, as reflected in the provisional agenda, was set within these parameters.

In response to another question from one of the Co-Chairs, the Senior Legal Officer clarified that the OEWG was a subsidiary body established by and reporting to the Conference of the Parties. The Conference of the Parties had adopted work programme for the OEWG and a programme budget providing for one meeting to be held in the intersessional period. The responsibility of the Bureau pertained to the preparations for the meeting and in particular matters pertaining to the organization of work of the meeting; therefore cancelling OEWG-12 would fall within the remit of the Conference of the Parties and not the OEWG Bureau, while it was understandable that, given the current extraordinary circumstances due to the COVID-19 pandemic, the OEWG-12 meeting could be postponed by a decision of the OEWG Bureau. As per past practice, it would fall upon the Co-Chairs to report back to the Conference of the Parties on how the OEWG had delivered on its mandate

In response to a question from a Bureau member, the Secretariat informed the Bureau that about 450 participants had so far registered for the online meeting of OEWG-12 scheduled to start on 22 June 2020. This included participants that had registered prior to the meeting being converted to an online meeting, as well as later registrations specifically for the online meeting.

The Bureau took note of the information provided.

3. Decision how to hold OEWG-12

Taking into account the feedback from the regions and clarifications from the Secretariat, the OEWG-12 Bureau decided to postpone OEWG-12 as currently planned. The Bureau requested the Secretariat to cancel all arrangements related to the meeting starting on 22 June 2020.

As a next step, the Bureau also agreed to continue to consult the regions on alternatives for holding OEWG-12, including regarding its scheduling and format, with a view to providing the best possible setting for all regions to move ahead with the important work under the Basel Convention. The Co-Chairs furthermore extended an offer to all Bureau members to be available to discuss and consult with their respective regions, should they so wish, and also invited them to engage in discussions with the Co-Chairs' regions. They also encouraged the Bureau members to liaise with one another during the consultations. The following three alternative options to be consulted with the regions were agreed:

1. Convening OEWG-12 as a face to face meeting, when this is possible in light of the evolution of the COVID-19 pandemic;
2. Convening OEWG-12 as an online meeting as initially agreed by the Bureau (online session and email correspondence procedure), no later than the beginning of September 2020;
3. Convening OEWG-12 as an electronic meeting using email correspondence procedure only, no later than the beginning of September 2020.

The Secretariat was requested to provide additional information on these three options, in particular their implications and related timelines, in a tabular format. The information is set out in the annex to the present report for consultation among Parties.

The Bureau members agreed to share feedback and take a decision on the way forward at its next meeting on 22 June 2020, at 5:30 p.m. (CEST). The Bureau agreed that should one member not be able to attend the meeting on Monday, 22 June 2020, it would either send a replacement or provide its region's position in writing in advance of the meeting.

4. Any other business

The Bureau requested the Secretariat to inform Parties, observers and all registered delegates for OEWG-12 of the postponement of the meeting.

Annex

Alternatives for organizing OEWG-12 to be consulted by Bureau members with the regional groups

	Option	Implications	Timelines
1	Convening OEWG-12 as a face to face meeting when this is possible in light of the evolution of the COVID-19 pandemic	<ul style="list-style-type: none"> This option is dependent on the development of the global COVID-19 pandemic. Based on current lack of clear information, and uncertainties with regards to flights and transit conditions, border controls, quarantine measures, issuance of visas, country health measures, etc., the meeting could at the earliest take place in 2021, with a chance that it could not be held in advance of COP-15 (19-30 July 2020). The meeting arrangements would be as usual for a face to face meeting: 2 days out of 4 with interpretation into all UN languages, with one additional day subject to the availability of resources. Any input provided by the OEWG would be too late to feed into the intersessional processes and would not be included in documents available in the 6 UN languages at COP-15, as the documents for COP-15 would need to be ready by 25 January 2020, to ensure they are properly edited, translated into the 6 UN languages and made available to Parties in good time. A significant amount of funds has already been committed to the online OEWG-12 as agreed upon by the 9 April 2020 Bureau meeting which will not be recoverable. Organizing a face to face OEWG at a later stage would have considerable financial implications and fundraising for participants' travel would need to be re-initiated in good time. New dates for the meeting need to be identified in good time to enable the Secretariat to procure suitable conference facilities according to UN rules of procurement, book translators and identify additional resources to meet the requirements of a face to face meeting (as the Secretariat would already be in full COP preparation mode during that period). Due to the cancellation of many international meetings, many organisations have schedule meetings during the first quarter of 2021 hoping the situation would improve. Potential conflicts and overlaps with those meetings should be considered together with several chemicals and waste related intergovernmental meetings already scheduled to take place in the first part of 2021: 16th meeting of the SC Persistent Organic Pollutants Review Committee (tentatively January 2021), UNEA-5 (22-26 February 2021), fourth meeting of the Intersessional Process considering the Strategic Approach and sound management of chemicals and waste beyond 2020 (possibly in March 2021 - tbc), regional preparatory meetings for the 2021 BRS COPs and SAICM ICCM-4 (May-June 2021). 	<ul style="list-style-type: none"> <u>Envisaged timeframe:</u> January-May 2021 <u>Duration:</u> 4 days plus one day of pre-meetings <u>Decision to be taken by the Bureau on such a meeting at the latest by:</u> at least 6 months ahead of the meeting

2	<p>Convening OEWG-12 as an online meeting as initially agreed by the Bureau (online session and email correspondence procedure), no later than the beginning of September 2020</p>	<ul style="list-style-type: none"> • Arrangements could be similar to what was foreseen for the 22 June 2020 meeting, i.e. including interpretation of the online session, translation of any revised draft decisions going for adoption, decisions setting out procedural elements. • If the commenting period is extended from 48 hours to 72 hours, a maximum of three rounds of comments on draft decisions is possible. • If the meeting takes place after the deadlines foreseen for comments on some of the products/ documents in front of OEWG-12², no additional commenting time on those products/documents would be possible following OEWG-12. All comments would need to be submitted during OEWG-12. • New dates for the meeting need to be identified. Among the intergovernmental meetings already scheduled to take place between July and September 2020 are: 64th Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol (7-9 July 2020), 42nd OEWG of the Parties to the Montreal Protocol (14-16 July 2020) and 16th meeting of the RC Chemical Review Committee (8-11 September 2020). 	<ul style="list-style-type: none"> • <u>Envisaged timeframe:</u> 20 July³ and 6 September 2020 • <u>Duration:</u> 2 weeks • <u>Decision to be taken by the Bureau on such a meeting at the latest by:</u> 22 June 2020
3	<p>Convening OEWG-12 as an electronic meeting using email correspondence procedure only</p>	<ul style="list-style-type: none"> • The meeting would be one week longer than under option 2, to provide for additional time to agree on the adoption of the agenda and organization of work by email. • There would be no live interaction between the Co-Chairs and Parties as well as among Parties, and the agenda items would not be introduced by the Secretariat. • The adoption of decisions would proceed the same way as under option 2. • If the commenting period is extended from 48 hours to 72 hours, a maximum of three rounds of comments on draft decisions is possible. • If the meeting takes place after the deadlines foreseen for comments on some of the products/ documents in front of OEWG-12⁴, no additional commenting time on those products/documents would be possible following OEWG-12. All comments would need to be submitted during OEWG-12. • New dates for the meeting need to be identified. Among the intergovernmental meetings already scheduled to take place between July and September 2020 are: 64th Implementation Committee under the Non-Compliance Procedure for the Montreal Protocol (7-9 July 2020), 42nd OEWG of the Parties to the Montreal Protocol (14-16 July 2020) and 16th meeting of the RC Chemical Review Committee (8-11 September 2020). 	<ul style="list-style-type: none"> • <u>Envisaged timeframe:</u> 20 July⁵ and 6 September 2020 • <u>Duration:</u> 3 weeks • <u>Decision to be taken by the Bureau on such a meeting at the latest by:</u> 22 June 2020

² See document UNEP/CHW/OEWG.12/15, some of those deadlines are 31 July 2020 and 31 August 2020.

³ UN Conference Services is not available to provide translations, interpretation and editing services prior to 20 July 2020 due to scheduling conflicts.

⁴ See document UNEP/CHW/OEWG.12/15, some of those deadlines are 31 July 2020 and 31 August 2020.

⁵ UN Conference Services is not available to provide translations and editing services prior to 20 July 2020 due to scheduling conflicts.