

Background Document for FOREST EUROPE Roundtable Meeting on Legally Binding Agreement on Forests in Europe

Introduction

Expert Level Meeting held on 28-29 November 2017, attended by 53 delegates representing 33 signatory countries and the European Union, 11 representatives of 7 observer organisations, decided that the Roundtable Meeting on Legally Binding Agreement on Forests in Europe (RTM) will take place in September 2018 in Bratislava. At the meeting, there was a common understanding that the purpose of the RTM is to exchange views and collect ideas on all options for the procedural follow-up of the Madrid Extraordinary Ministerial Decision. Furthermore, it was decided that background document for the RTM will be circulated in early 2018, comprising, *inter alia*, a summary of the developments on this issue until today. It was agreed that the RTM output will be presented to subsequent Expert Level Meeting for its consideration.

Summary of the previous developments on a legally binding agreement on forests in Europe

At the fifth Ministerial Conference on the Protection of Forests in Europe, 5-7 November 2007, Warsaw, Poland, it was proposed to begin a process for exploring the possibility for a legally binding agreement on forests in the pan-European region. Representatives of signatory countries and observers at the Ministerial Conference called for a coherent approach to continent's forests since the complex challenges faced by forests in rapidly changing environment and society cannot be addressed through measures in the forestry sector alone. For that reasons better coherence in forest-related decision-making, and strengthening relationships and synergies among different sectors that affect forests was seen as a way forward to maintain and enhance forest resources, their vitality and resilience in long term perspective as well as to reinforce the implementation of sustainable forest management in Europe.

The first **Expert Level Meeting after the Warsaw Conference held on 7 – 8 May 2008**, in Oslo, Norway adopted the Terms of Reference for an **MCPFE Working Group on exploring the potential added value of and possible**

options for a legally binding agreement on forests in the pan-European region (WG 1). The Working Group was operating in the period of November 2008 till October 2009 with participation of nearly 80 representatives of the FOREST EUROPE signatories and observers. There were four meetings of the WG1 in Athens, November 2008; Oslo, May 2009; Rome, September 2009; and Brussels, October 2009. The Working Group conducted a detailed analysis of numerous aspects of a possible legally binding agreement. The Working Group, *inter alia*, proposed the main objective, core and dynamic elements, and suggested examples of possible levels of commitments. Simultaneously, it analysed potential added value, pros and cons of a possible legally binding agreement on the basis of the existing MCPFE process, estimated financial aspects, and considered implications for the MCPFE (FOREST EUROPE) process itself and other processes and bodies including forest related treaties and the European Union. The final report¹: **Main findings and recommendations** released on 28 October 2009, constituted an analytical framework for further work. The Working Group recommendations and proposals were given for consideration at the **Expert Level Meeting held in Oslo, November 2009.**

The Expert Level meeting highlighted the outcomes of the Working Group and adopted Terms of Reference for the ensuing **Working Group on preparing options for a decision on a possible legally binding agreement on forests in Europe (WG2).** More than 40 Working Group members met for three times: in Geneva (February 2010), in St. Petersburg (July 2010) and in Rome (September-October 2010). Within the given period, the WG 2 prepared the following documents:

- A non-paper document² containing example core elements (examples of content) of a possible legally binding agreement on forests in Europe;
- A technical background document³ presenting a brief summary of the outcomes of the comprehensive scoping exercise and technical preparations that resulted from the work of both WGs. The background document suggested, *inter alia*, possible options for strengthening the policy framework and a possible type of a legally binding agreement as well as options for negotiation arrangement and secretariat of such an agreement;
- A draft Oslo decision on opening negotiations on a legally binding agreement on forests in Europe⁴;
- A document on consideration of possible rules of procedures for a negotiating committee⁵.

¹ Main findings and recommendations of the MCPFE Working Group on exploring the potential added value of and possible options for a legally binding agreement on forest in the pan-European region. <http://foresteurope.org/wp-content/uploads/2016/11/Main-Findings-and-Recommendations-WG1-LBA.pdf>

² Non-paper on a possible legally binding agreement on forest in Europe. <http://foresteurope.org/wp-content/uploads/2016/11/Non-Paper-LBA.pdf>

³ Technical background for a ministerial decision on negotiating a legally binding agreement on forests in Europe. http://www.foresteurope.org/docs/ELM/2010/ELM_2010_Geneva_Doc3_2_TechnicalpaperLBA.pdf

⁴ Draft Oslo decision on opening negotiations on a legally binding agreement on forests in Europe. http://www.foresteurope.org/docs/ELM/2010/ELM_2010_Geneva_Doc3_3_DraftOslodecisionLBA.pdf

⁵ Consideration of possible rules of procedure for the negotiating committee to prepare a legally binding agreement on forests in Europe. http://www.foresteurope.org/docs/ELM/2010/ELM_2010_Geneva_Doc3_4_RulesofProcedureLBA.pdf

Apart from that, two informal meetings on issues related to a legally binding agreement on forests in Europe were organized prior to the Oslo Ministerial Conference by the MCPFE.

At the **sixth FOREST EUROPE Ministerial Conference in Oslo in June 2011**, the **Oslo Ministerial Mandate for Negotiating a Legally Binding Agreement on Forests in Europe**⁶ (LBA) was adopted, under which FOREST EUROPE signatories decided to take international actions aimed at elaboration of LBA, and established an **Intergovernmental Negotiating Committee (INC)** with the mandate to develop such an agreement. In line with the Oslo Mandate the Bureau of the INC was established consisting of the Chair of the Committee and representatives of the following countries: Austria, the Czech Republic, France, Norway, Poland, the Russian Federation, Turkey, and Ukraine, and Spain as the permanent observer. FOREST EUROPE Liaison Unit was requested, and the United Nations Economic Commission for Europe, the Food and Agriculture Organization of the United Nations, the United Nations Environment Programme and the European Forest Institute were invited to serve jointly the negotiating process.

Although rooted within FOREST EUROPE (through the Oslo Mandate), the INC-Forests was an independent process. Under this mandate, the INC was expected to complete its work by 30 June 2013, and present its results at the FOREST EUROPE Extraordinary Ministerial Conference to be held within six months of the conclusion of the negotiations.

As given by the Oslo Mandate the **INC had four sessions** during the period 2011-2013, two of which also had resumed segments. Close to 40 member countries participated actively in the negotiations. There were several countries from other regions observing the work of the INC as well as numerous civil society organizations, and altogether some 25 international organizations. Discussions have taken account of the complex nature of forests and forestry, and the forest diversity of the region.

Overview of the INC-Forests Sessions

INC-Forests 1 (held from 27 February to 2 March 2012 in Vienna, Austria)

INC-Forests 1 focused on providing guidance to the INC Bureau to elaborate the initial draft negotiating text of an agreement. During the session, the INC considered a “Non-paper on a Possible LBA on Forests in Europe,” and discussed the possible structure of such an agreement. It also established a roadmap for the negotiations and requested the INC Bureau to develop the first draft of the negotiating text.

INC-Forests 2 (held on 3-7 September 2012 in Bonn, Germany)

INC-Forest 2 undertook the first reading of LBA draft negotiating text drafted by the INC Bureau at the request of INC-Forests 1. Following this first reading a revised text was produced which incorporated proposals by delegates and observers during the first reading. The revised text was considered by two ad hoc working groups established during the session. The working groups addressed general provisions, compliance, procedures and final clauses. The INC-Forests 2 discussed terms and definitions and agreed on a list of those deemed essential for LBA, indicating that some intersessional

⁶ Oslo ministerial Mandate for negotiating a legally binding agreement on forests in Europe.
http://www.foresteuropa.org/docs/MC/MC_oslo_lba_mandate.pdf

work might be required on definitions. The INC -Forests 2 also revised the roadmap for the negotiation process and intersessional work.

During INC-Forests 2, Spain offered to host a **Country-Led Initiative Expert Meeting** in order to consider, in detail, the terms and definitions needed for LBA. At the Expert Meeting on Terms and Definitions held in November 2012 in Madrid, participants examined the list of terms discussed during INC-Forests2 and recommended those they deemed essential for the final LBA text, along with suggested definitions. They also determined which terms did not require definitions, and elaborated a list of additional terms that they believed should be added to the section.

INC-Forests 3 (held from 28 January to 1 February 2013 in Antalya, Turkey; resumed session held on 3-5 April 2013 in Saint Petersburg, the Russian Federation)

INC-Forests3 continued to revise the draft negotiating text for LBA as revised by INC-Forests 2 and considered the outcome of intersessional work undertaken by the Expert Meeting on Terms and Definitions; and addressed a paper on the implications of various options for bringing LBA under the United Nations umbrella, which was produced by independent consultants at the Chair's request.

INC-Forests3 completed the second reading and most of the third reading of the LBA draft negotiating text. Two working groups were established to focus on compliance and whether to bring LBA under the UN umbrella.

The resumed session of INC-Forests3: (i) continued to revise the draft negotiating text for LBA; (ii) changed the structure of the draft negotiating text to bring it more in line with a convention format; (iii) decided to bring LBA under the UN umbrella, and to take a decision on where to place LBA within the UN system at INC-Forests4; (iv) reviewed the annex on arbitration drafted by the Secretariat; (v) mandated the Bureau to produce a draft annex on conciliation and a document on finance options for consideration at INC-Forests4; and (vi) revised in detail the roadmap for the rest of the negotiation process. In addition, a legal expert group was created to review the draft's final clauses of LBA.

Ahead of the INC Forest 4, Confederation of European Forest Owners in co-operation with FOREST EUROPE and the EU Economic and Social Committee organized **Stakeholders meeting on a legally binding agreement on forest in Europe** (held on May 2013 in Brussels). Participants of the meeting discussed the key issues of possible LBA for the work of civil society groups and stakeholders as well as participation of stakeholders.

INC-Forests 4 (held on 10-14 June 2013 in Warsaw, Poland; resumed session held on 7-8 November 2013 in Geneva, Switzerland)

INC-Forests 4 revised most of the draft negotiating text for LBA, including two annexes on arbitration and conciliation, and continued the discussion of: (i) arrangements for bringing LBA under the UN umbrella; (ii) possible financial and secretariat arrangements for LBA; and (iii) presentation of the results of INC-Forests to the Extraordinary Ministerial Conference scheduled for November 2013. The session was unable to conclude its consideration of all issues and to reach the final agreement, and consequently was suspended.

The resumed session considered outstanding issues including: (i) decisions on the depositary/host for a convention; (ii) interim and permanent secretariat

arrangements; (iii) adjustments to final clauses that might be necessary following the choice of the depositary; and (iv) provisions on issues such as the admission of observers, the rules for the compliance committee and the right to vote.

Resumed INC-Forests⁴ was unable to produce breakthroughs on the bracketed articles of the draft negotiating text, the draft decision to be sent to the Extraordinary Ministerial Conference, which will review the results of the Intergovernmental Negotiating Committee, and arrangements on institutional matters. The unfinished convention text and draft decision were forwarded to the Extraordinary Ministerial Conference to be held at a date to be determined, for consideration and appropriate action.

FOREST EUROPE Extraordinary Ministerial Conference in Madrid

The results and achievements of the INC work including its main outcome - the Draft Negotiating Text for LBA⁷ (DNT) were consequently presented to ministers at the **FOREST EUROPE Extraordinary Ministerial Conference (EMC), held in Madrid, in October 2015.**

The EMC adopted Madrid Ministerial Decision⁸, noting that FOREST EUROPE signatories “*acknowledge the work of the Intergovernmental Negotiating Committee and take note of the outcome as contained in the report of the fourth resumed and final session of the Intergovernmental Negotiating Committee*”; and recognize the draft negotiating text as “*a basis for potential further consideration of the Legally Binding Agreement.*”

As stated in the **Decision** (2015), representatives of the FOREST EUROPE signatories “*at an appropriate time and at the latest by 2020 will explore possible ways to find common ground on the Legally Binding Agreement.*”

Follow-up of the Madrid Extraordinary Ministerial Decision

In order to fulfil the commitment from EMC, the **FOREST EUROPE Work Programme 2016-2020**, adopted by the Expert Level Meeting in May 2016 in Bratislava, implies a specific action targeted at **further discussions on LBA**. The signatories and observers agreed to convene the RTM concerning all options for the **procedural follow-up of the Madrid Extraordinary Ministerial Conference**. It was decided that the final decision on the RTM scheduled for early 2018 will be taken by the ELM in 2017.

⁷ Draft Negotiating text for a legally binding agreement on forests in Europe as on 8 November 2013. http://foris.fao.org/static/forestnegotiations/INC4_REPORT_ANNEX_F.pdf

⁸ Madrid Ministerial Decision as adopted by the Extraordinary Ministerial Conference. http://foresteurope.org/wp-content/uploads/2016/11/V.-EMC_MadridMinisterialDecision.pdf

Guiding questions for the RTM meeting

Block I. General positions/views of signatories and observers towards a legally binding agreement on forests in Europe

1. Considering the recent forest-related policy developments (since the last INC meeting), do you see an international/pan-European law on SFM as still missing? Where do you see the benefits of LBA?
2. Alternatively, which aspects should be addressed before your country/organization would support continuation of LBA negotiations?
3. Where do you see a need for updates to agreed ad ref. parts of the Draft Negotiation Text?

Block II. Procedural follow up of the Madrid Extraordinary Ministerial Decision

1. What is, from the position of your country, an appropriate and preferred procedural follow-up to the Madrid Extraordinary Ministerial Decision?
 - new mandate and restart of negotiations under the UN umbrella
 - under FAO
 - under UNECE;
 - new mandate and restart of negotiations under another international organization/process;
 - new mandate and restart of negotiations under FOREST EUROPE by (re)- establishing the INC;
 - other options (e.g. finalize negotiations under the Madrid mandate).
2. What should be, from the position of your country, the next necessary steps forward and who should be responsible for taking them?⁹

⁹ The GCC plans to elaborate an additional explanatory note on possible procedural pathways/practical steps to be followed under the various options