

Ref.: 2018/OES/438/FLH

21 November 2018

Dear Ms. Marušáková,

On behalf of UNECE, I have the honor to submit our response to the questions put forth by the FOREST EUROPE General Coordinating Committee in preparation for the next FOREST EUROPE Expert Level Meeting (ELM) to be held on 5-6 December 2018 in Bratislava (see attachment). We trust that this information will assist the ELM to better understand the relevant bodies and available procedures towards further negotiation and adoption of a Legally Binding Agreement on Forests in Europe (LBA) under UN or UNECE auspices.

UNECE had hoped to submit its response jointly with FAO and to that end, had duly shared our inputs with FAO Secretariat for its review and comments. We are still awaiting a reply from FAO and have thus decided to share our responses separately to comply with your request and its deadline. We stand ready to work with FAO to integrate the UNECE and FAO inputs once received. In turn, we would welcome the opportunity to review the FAO response. We are available to provide any necessary clarifications during the meeting in Bratislava in particular *vis-à-vis* the 'joint options' and the procedural steps required for the negotiations to be hosted jointly by UNECE and FAO.

In order to facilitate the review of the information contained in this submission, I would be grateful if you could forward this letter as well as its attachment to the FOREST EUROPE signatories at your earliest convenience.

My colleagues and I look forward to seeing you and our FAO colleagues at the ELM meeting in Bratislava.

Yours sincerely,



Olga Algayerova

Ms. Ľudmila Marušáková  
Head  
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Zvolen

**Attachment to the letter of the UNECE executive Secretary to FOREST EUROPE  
21 November 2018**

At the outset, UNECE would like to share the following general comments on the three Options put forth by the FE.

***Procedural Option A: Negotiation Under the Existing Madrid Mandate***

Negotiations on the draft LBA could be finalized under the existing Madrid mandate and the resulting draft LBA can be approved and adopted by the 8th regular or 2nd extraordinary FE Ministerial Conference or approved by the latter and forwarded for adoption by the UNECE or other UN or UN system organ including the UN General Assembly (UNGA) and/or the FAO General Conference (FAOGC).

It is important to note that any one or more Member State can propose the adoption of the LBA by the UNECE Executive Committee (EXCOM) or by the UN General Assembly (UNGA) itself.

In the event that the draft LBA has financial implications on the UNECE regular budget or the UN and/or mandates the UNECE to report to an authority external to the United Nations, the draft LBA must be submitted to the General Assembly (UNGA) for approval prior to its adoption by the UNECE. <sup>1</sup>

***Procedural Option B: Negotiated Under a New FOREST EUROPE Mandate***

Negotiations on the draft LBA could be finalized under a new FOREST EUROPE mandate by a new Intergovernmental Negotiating Committee (INC) established by the 8th regular or the 2nd extraordinary Ministerial Conference. The INC would in turn report to the next regular or extraordinary ministerial conference which would in turn approve and adopt the draft LBA or approve and forward it to the UNECE EXCOM or other UN or UN system organ including the UN General Assembly for submission to the UNECE EXCOM or other UN or UN system organ including UNGA and FAOGC.

The considerations mentioned above apply whether negotiations are conducted under an existing FOREST EUROPE mandate or under a new one.

For ease of reference, any one or more Member State can propose the adoption of the LBA by the UNECE Executive Committee (EXCOM) or by the UN General Assembly (UNGA) itself.

In the event that the draft LBA has financial implications on the UNECE regular budget or the UN and/or mandates the UNECE to report to an authority external to the United Nations, the draft LBA must be submitted to the General Assembly (UNGA) for approval prior to its adoption by the UNECE

***Procedural Option C: Under a UN and/or UN System Mandate***

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<sup>1</sup> Article 100, paragraph 1 of the Charter of the United Nations provides that "[i]n the performance of their duties the Secretary-General and the staff shall not seek or receive instructions from [...] any other authority external to the Organization". Article 98 of the Charter provides that the Secretary-General is required to perform such functions that are entrusted to him by the General Assembly, the Security Council and the Economic and Social Council.

To the extent that the LBA is adopted by UNECE, and serviced by UNECE within existing or extrabudgetary resources, there will be no need to obtain UNGA approval. Approval of EXCOM /UNECE Commission would be needed to authorize the use of RB resources for secretariat staff, office space, meeting rooms, translations, interpretation.

If any part of the UNECE secretariat will be reporting to an authority external to the United Nations (including the FE or the FAO), UNGA approval will be required. If any regular budget resources are required for UNECE to host the negotiation of the draft LBA or to serve as its secretariat upon the adoption of the LBA (whether alone or in conjunction with FAO), the approval of the Fifth Committee of the UN General Assembly (UNGA) and the UNGA itself will also be required.

**Q1: What procedures need to be followed for the further negotiations to be conducted under the aegis of UNECE or FAO or a joint body under UNECE and FAO (see Option « C ») – what procedural steps are needed/can be applied regarding the request, its approval and negotiations (please elaborate information for (i) using an existing body and (ii) a specific body established for this purpose)?**

The procedures for negotiation and adoption involving the UNECE only or jointly with FAO can be summarized as follows:

#### *UNECE only*

1. If the GCC wishes to rely on existing bodies, the relevant UNECE bodies are:
  - (a) UNECE Committee on Forests and the Forest Industry (COFFI)
  - (b) UNECE Executive Committee (EXCOM)/Commission
2. In that event, the following procedural steps may be applied in accordance with the rules of procedures of the Economic Commission for Europe.
  - (a) On the proposal of COFFI or one or more member States, UNECE EXCOM/Commission could agree to host negotiations of LBA under COFFI which would negotiate the text of the draft LBA, endorse it, and forward it to UNECE for adoption; or
  - (b) On the proposal of one or more Member States, the UNECE EXCOM/Commission can negotiate and adopt the draft LBA under its own auspices
3. If the GCC prefers to proceed with a new UNECE body specifically dedicated to the LBA, the UNECE could establish:
  - (a) An ad hoc UNECE Task Force (TF)
  - (b) A standing UNECE Inter-governmental Negotiating Committee (INC)
4. In that event, the following procedural steps may be applied in accordance with the rules of procedure of the Economic Commission for Europe.
  - (a) EXCOM/Commission would decide whether to establish an INC under its own auspices or an ad hoc TF. In the latter case, the EXCOM would also decide whether the TF reports directly to EXCOM or indirectly through COFFI.
  - (b) EXCOM would also decide whether membership in the INC or in the TF is limited or open-ended.

- (c) The TF or INC would be tasked to review and if necessary further elaborate the draft text and other issues related to the LBA.
- (d) The INC would report back to EXCOM and the TF would report back directly to EXCOM or indirectly through COFFI (possibly at a joint session with EFC in 2019) on results and recommendations regarding a final draft text of the LBA.
- (e) UNECE COFFI reports its own conclusions and recommendations to EXCOM.
- (f) UNECE EXCOM/Commission will adopt the draft LBA. Any financial implications on the regular budget must be approved by the UNGA before its adoption by the UNECE.

***FAO only [to be provided by FAO]***

***Joint UNECE/FAO [subject to further input by FAO and review of UNECE]***

1. If the GCC wishes to rely on existing joint bodies of the UNECE and FAO, the relevant bodies are:
  - (a) Joint UNECE/FAO Working Party on Forest Statistics, Economics and Management (JWPF)
  - (b) Joint UNECE/FAO Team of Specialists on Forest Policy (JTS)
2. In that event, the following procedural steps may be applied in accordance with the UNECE rules of procedure as well as FAO rules of procedure.
  - (a) On the proposal of one or more member States, the relevant FAO organ and the UNECE EXCOM separately authorize the JWP or the JTS to review and if necessary further elaborate the draft text and other issues related to the LBA
  - (b) The JWP or JTS would report back to UNECE EXCOM and FAO on the results and recommendations of their deliberations on the final draft text of the LBA.
  - (c) The UNECE and FAO will jointly (even if separately) adopt the LBA. If any part of the UNECE Secretariat will report to any authority external to the United Nations (including the FAO as lead) or there are financial implications to the regular budget, the draft LBA must be approved by the UNGA before its adoption by UNECE and FAO.
3. If the GCC prefers to proceed with a new joint UNECE/FAO body specifically dedicated to the LBA, the UNECE and FAO could establish a Joint UNECE/FAO Intergovernmental Negotiation Committee (JINC).
4. In that event, the following procedural steps may be applied in accordance with the UNECE rules of procedure as well as the FAO rules of procedure.
  - (d) On the proposal of one or more member States, the relevant FAO organ and the UNECE EXCOM/Commission separately decide to establish JINC to review and if necessary further elaborate the draft text and other issues related to the LBA
  - (e) The JINC would report back to UNECE EXCOM and FAO on the results and recommendations of their deliberations on the final draft text of the LBA.
  - (f) The UNECE and FAO will jointly (even if separately) adopt the LBA. If any part of the UNECE Secretariat will report to any authority external to the United Nations (including the FAO as lead) or there are financial implications, the draft LBA must be approved by the UNGA before its adoption by UNECE and FAO.

**Q2: How would adoption be organized (under which body and what procedural steps are needed/can be applied regarding the adoption)?**

Under option C, it should be noted that UNECE EXCOM meets every second month with one-month deadline for submitting documents. The legally binding agreement could be included as an agenda item for discussion and decision three months after conclusion of external negotiations on the text.

Under option A and B, the draft LBA can be submitted to the UNGA at any time of the year for approval and/or for adoption under a new dedicated agenda item on the proposal of one or more Member States (such item would be proposed in accordance with Rule 13 (if 60 days before the start of the regular session), Rule 14 (if less than 60 but more than 30 days before the session starts) or Rule 15 (if less than 30 days before the start of the session or anytime during the session) of the Rules of Procedure of the UN General Assembly or alternatively under the existing item on the report of the ECOSOC which would include the reports on the work of the UNECE and other regional commissions.

**Q3: How can the secretariat arrangement be organized?**

In case the question refers to the temporary secretariat for the negotiations, it would depend very much on the option chosen and the availability of extrabudgetary resources.

In general, and in particular once the LBA is adopted, subject to the necessity for UNGA approval (see general comments on options above) and availability of resources, the UNECE can organize the LBA secretariat (independently from or jointly with FAO) as a new separate secretariat or by or under the auspices of the Joint UNECE/FAO Forestry and Timber Section.

**Q4: On the first three questions, please note that the priority of information provided should be on Option C, as this option was most preferred one at the RTM. However, regarding options « A » and « B » please recapture briefly from existing INC information (i) how adoption would be organized if the UN would be invited to adopt the agreement's text negotiated outside the UN, how the secretariat arrangement can be organized in such cases, and (ii) how the secretariat can be serviced either individually or jointly by the specified UN entities in case if the agreement is adopted outside of UN (non-UN treaty)?**

1. Further to what is outlined in questions 1-3 above, it is important to reiterate that:
  - (a) UNGA approval is required for the provision of any UNECE secretariat services to an LBA concluded outside of the United Nations, irrespective of whether such services are to be provided by UNECE solely or jointly with FAO.
  - (b) If and when the LBA is concluded either in diplomatic conferences convened by the United Nations or through one of the United Nations organs, a resolution of the General Assembly is adopted subsequently regarding the provision of services by the Secretary-General to that treaty body.
  - (c) If the LBA is to be adopted under non-UNGA whether by FAO or a GCC-convened Ministerial Conference, EXCOM/ UNECE Commissions should approve and send to UNGA to approve any secretariat services by the UNECE before any such adoption and authorize an if necessary allocate resources for delivery of such services after such adoption.

2. Depending on the provisions of the LBA, and subject to UNGA and FAO approval and the availability of resources, the UNECE/FAO will jointly organize the LBA secretariat either as a new joint UNECE/FAO secretariat or by or under the auspices of the existing Joint UNECE/FAO Forestry and Timber Section.

**Q5: What would be the financial implications of outlined alternative pathways – specially considering Option C)?**

1. Servicing the negotiation process for the text of the LBA in a limited number of informal meetings conducted in English only will not have additional financial implications. If more formal sessions or other languages are required, additional assessed or extrabudgetary resources would be needed.
2. Should member States opt for an official process with three official languages, this will have financial implications, independently of the body and structure chosen for the negotiation. Member States will be required to provide sufficient funding for an extra budgetary project with the UNECE. Member States do not need to wait until the Joint COFFI/EFC session in 2019 since the only requirement is formal approval of the process and project by UNECE EXCOM. The project can be a single- or multi-donor project, which will require about four months to become operational.
3. Using extrabudgetary resources will have the advantage, that the process can be much faster. It will take about five months before the extrabudgetary funding would be available [(i) donor identified, agreement reached with donor on project concept note and submission of relevant document to UNECE EXCOM (six-eight weeks); (ii) Project approved by UNECE EXCOM and administrative steps for project setup at the UNECE (three weeks); Donor agreement developed, signed and request of transfer of funds (four weeks); allotment of funds at UNECE project operational (two weeks); issuing first contract (five weeks)].
4. Currently, the UNECE hosts more than 60 regional and global conventions and agreements including 5 multilateral environmental agreements (MEAs). All of the MEAs provide that the Executive Secretary of UNECE carries out substantive secretariat functions in their support and that the Secretary-General of the United Nations acts as the Depository. All 5 MEAs serviced/administered by UNECE are funded from extra-budgetary resources, while substantive secretariat support for the "core" activities, like servicing the Meetings of Parties, are absorbed within UNECE regular budget resources, and conference servicing may be provided within the UNECE allocation from DGAMC.
5. All UNECE MEAs are funded with voluntary contributions, except for the Protocol under the Convention on Long-range Transboundary Air Pollution, which is funded from assessed contributions. While it would be up to Member States to decide if financial support to the LBA is to be provided from voluntary or assessed contributions, effective and sustainable functioning of the LBA would require stable and predictable extra-budgetary funding.
6. While the resource requirements could accurately be determined only after the provisions of the LBA are agreed upon, it can be estimated that, if the work related to the LBA would be funded exclusively on extrabudgetary resources, a very indicative estimate for the substantive servicing of the LBA would be around approximately 750,000 US dollars per year. This would cover the costs for two professional and two general service posts,

as well as financial support to representatives of Parties to the LBA from lower income countries to attend Meetings of Parties, if they require such assistance.

**Q6: What rules would govern the use of the existing draft negotiating text and could conditions be applied to avoid renegotiation of already agreed (ad ref) paragraphs?**

1. All Sectoral Committees and other subsidiary bodies may adopt their own Rules of Procedure on the basis of UNECE Rules of Procedure and, where applicable, Rules of Procedure of the Economic and Social Council, taking into account these guidelines. Otherwise it will be presumed that they are governed by the Rules of Procedure of the Commission and, where applicable, Rules of Procedure of the Economic and Social Council and taking into account these guidelines mutatis mutandis (E/2013/37-E/ECE/1464)<sup>2</sup>.
2. The mandating resolution can include negotiating parameters providing that, unless otherwise agreed (for instance to make necessary consequential changes in light of new agreed text), the negotiating body shall not re-open previously agreed text for discussion.

**Q7: Which rules would apply to establish a regional pan-European convention that is of different scope than the hosting organization? What rules would govern the participation of countries (in negotiations or accession when the agreement is adopted) who are not signatories to FOREST EUROPE (outside of the region) but are members of the FAO or UNECE and/or did not take part in previous LBA negotiations? What rules would govern the participation of those FOREST EUROPE signatories which are not members of the organizations, especially what rules would govern the participation of the EU and its Member States?**

1. It is important to note that all Forest Europe signatories are members States of the UNECE or participate under Article 8 of the Commission's terms of reference (Holy See, E/ECE/909) and will thus be full members of any UNECE or joint UNECE/FAO negotiating process.
2. 11 member States of the UNECE are not currently signatories to the Forest Europe Process (Armenia, Azerbaijan, Canada, Israel, Kazakhstan, Kyrgyzstan, San Marino, Tajikistan, Turkmenistan, United States of America and Uzbekistan<sup>3</sup>) and would be welcome to automatically join any UNECE or joint UNECE/FAO negotiating process. There is nothing in the UNECE framework that would impede or prevent these countries in joining a UNECE negotiation process, it would however depend on the Forest Europe process whether they would wish to include non-European countries in the scope of the Convention or in the negotiating process.
3. The scope of the Convention needs to be clarified and decided before the negotiations start including the status of the EU itself as member of the negotiating process as well as a prospective party to the ultimate LBA. For instance, although the EU is not a member of UNECE, the EU has nonetheless been a negotiating partner in various

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<sup>3</sup> Armenia, Azerbaijan, Kyrgyzstan, Tajikistan, Turkmenistan, and Uzbekistan seem to be covered by the Oslo mandate according to the Annex to the mandate.

UNECE Conventions as well as a party thereto, based on the provisions provided in GA resolution A/RES/65/276.

**Q8: What rules would govern the participation of observers (current FOREST EUROPE observers and potential new observers) in negotiating the treaty text as well as their role in future conferences of parties?**

1. The rules of procedure applicable to the negotiation process will depend on the UNECE and/or FAO body ultimately tasked to serve as the negotiating body and the rules of procedure applicable to it. As mentioned above, in the United Nations, all Sectoral Committees and other subsidiary bodies may adopt their own Rules of Procedure on the basis of UNECE Rules of Procedure and, where applicable, Rules of Procedure of the Economic and Social Council, taking into account these guidelines. Otherwise it will be presumed that they are governed by the Rules of Procedure of the Commission and, where applicable, Rules of Procedure of the Economic and Social Council and taking into account these guidelines *mutatis mutandis* (E/2013/37-E/ECE/1464).
2. Again, it is important to note that all Forest Europe signatories are members States of the UNECE or participate under Article 8 of the Commission's terms of reference (Holy See, E/ECE/909) and will thus be full members of any UNECE or joint UNECE/FAO negotiating process. Specialized agencies and NGOs will participate in accordance with Chapters XIII and XIV of the UNECE Rules of Procedure respectively. Participation in any future Meetings of the Parties to the LBA would depend on the relevant articles of the ultimate LBA and any Rules of Procedure adopted by the Meeting of the Parties established under the LBA.
3. By way of example, extensive information on the participation of observers in treaty bodies adopted under UN auspices is provided in a letter dated 25 October 2013 from the UN Legal Counsel to Mr. Jan Heino, the former Chair of the INC.

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