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**CONFERENCE OF THE PARTIES SERVING AS THE
MEETING OF THE PARTIES TO THE KYOTO PROTOCOL**
Fifth session
Copenhagen, 7–18 December 2009

Item X of the provisional agenda

**Proposal from the Czech Republic and the European Commission
on behalf of the European Community and its member States
for an amendment to the Kyoto Protocol**

Note by the secretariat

1. Article 20, paragraph 1, of the Kyoto Protocol states that “any Party may propose amendments to this Protocol”. Article 20, paragraph 2, of the Kyoto Protocol stipulates that “amendments to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed amendment to this Protocol shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed amendments to the Parties and signatories to the Convention and, for information, to the Depositary”.
2. Article 21, paragraph 2, of the Kyoto Protocol states that “any Party may make proposals for an annex to this Protocol and may propose amendments to annexes to this Protocol”. Article 21, paragraph 3, of the Kyoto Protocol provides that “annexes to this Protocol and amendments to annexes to this Protocol shall be adopted at an ordinary session of the Conference of the Parties serving as the meeting of the Parties to this Protocol. The text of any proposed annex or amendment to an annex shall be communicated to the Parties by the secretariat at least six months before the meeting at which it is proposed for adoption. The secretariat shall also communicate the text of any proposed annex or amendment to an annex to the Parties and signatories to the Convention and, for information, to the Depositary”.
3. In accordance with these provisions, the Czech Republic and the European Commission, on behalf of the European Community and its member States, by a letter dated 10 June 2009, transmitted to the secretariat the text of a proposal for an amendment to the Kyoto Protocol. Pursuant to Article 20, paragraph 2, and Article 21, paragraph 3, of the Kyoto Protocol, the secretariat will send a note verbale containing this text to all National Focal Points for climate change and Permanent Missions to the United Nations by 17 June 2009. In accordance with the same provisions, the secretariat will also communicate

the proposed amendment to the Parties and signatories to the Convention and, for information, to the Depositary.

4. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol is invited to consider this proposal for an amendment to the Kyoto Protocol at its fifth session.

**Letter dated 10 June 2009 from the Czech Republic and
the European Commission on behalf of the European Community
and its member States addressed to the Executive Secretary of
the secretariat of the United Nations Framework Convention
on Climate Change proposing an amendment to the Kyoto Protocol**

According to Article 20(1) of the Kyoto Protocol, any Party may propose amendments to this Protocol.

The Czech Republic, currently holding the Presidency of the Council of the European Union, and the European Commission are hereby submitting, on behalf of the European Community and the Member States, a proposal for an amendment to the Kyoto Protocol, as set out in the Annex hereto.

The European Union would like to emphasise at this stage that this amendment proposal is without prejudice to the position of the European Union in the negotiations. Nor will this proposal preclude further consideration being given to the amendment of Annex B and other relevant Articles of the Kyoto Protocol in order to reflect in particular new commitments by developed countries.

We would be grateful if the Secretariat would communicate this letter with the Annex to the other Contracting Parties.

[signed]
HE Ms Jana Reinišová
Minister Counsellor
Deputy Permanent Representative
of the Czech Republic
Council of the European Union

[signed]
Mr Karl-Friedrich Falkenberg
Director-General
Directorate General of the Environment
European Commission

EU proposal for an amendment to the Kyoto Protocol

Article 1

(activity-based approach)

Add the definitions of the Annex to decision 16/CMP.1 [amend where necessary e.g. for forest management, extreme disturbances and new activities]

Article 2

Replace paragraph 2:

"2. Parties shall take the necessary action to achieve a reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from international aviation and maritime transport."

Insert the following paragraphs after paragraph 2:

"2 bis. Global reduction targets for the emissions from international aviation shall be set equal to [X] per cent below 2005 levels in the commitment period [20XX to 20XX].

Supplemental to action on international aviation Parties may allow units from the mechanisms defined in Articles 6 and 12 [placeholder for new mechanisms] for the purposes of achieving the aforementioned targets.

2 ter. Global reduction targets for the emissions from international maritime transport shall be set equal to [Y] per cent below XXXX levels in the commitment period [20XX to 20XX].

Supplemental to action on maritime transport Parties may allow units from the mechanisms defined in Articles 6, 12, and 17 [placeholder for new mechanisms] for the purposes of achieving the aforementioned targets.

2 quater. Parties shall work through the International Civil Aviation Organization and the International Maritime Organization, to enable an effective international agreement to achieve international targets that do not lead to competitive distortions or carbon leakage to be approved by 2011 [or after 2 years

from the entry into force of this Protocol]¹. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall assess progress of the implementation of this paragraph, and shall take action to advance the implementation, as appropriate."

Article 3

Replace paragraph 1:

"1. The quantified emission limitation or reduction commitments and [...] for the period [...] inscribed in [...] shall only apply once [*specified conditions have been met, e.g. a certain percentage of GHG emissions are covered*]."

Insert a new paragraph 1 bis:

"1 bis. The Parties included in Annex I shall, individually or jointly, ensure that their aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in the third column of Annex B and in accordance with the provisions of this Article, with a view to reducing their overall emissions of such gases by 30 per cent below 1990 levels [by the end of] [in] the commitment period 2013 to 2020, [and in accordance with the annual compliance assessment set out in article ...]."

To be complemented by a new article on annual compliance assessment.

(activity-based approach)

Replace paragraph 3:

"3. For the first commitment period the net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks

¹ It would be alternatively necessary either to adopt a decision at COP/MOP5 (in Copenhagen, with immediate entry into force) to mirror the timeframe of 2011 or to provide for a flexibility option in case the Copenhagen agreement has not entered into force before 2011.

in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I."

Insert new paragraph 3 bis:

"3 bis. For the second commitment period the net changes in greenhouse gas emissions by sources and removals by sinks resulting from direct human-induced land-use change and forestry activities, limited to afforestation, reforestation and deforestation since 1990, measured as verifiable changes in carbon stocks in each commitment period, shall be used to meet the commitments under this Article of each Party included in Annex I."

or

"For the second commitment period a new option where afforestation, reforestation and deforestation in Article 3(3) and forest management activities in Article 3(4) are merged."

Replace paragraph 4 (deletion of penultimate sentence):

"Prior to the first session of the Conference of the Parties serving as the meeting of the Parties to this Protocol, each Party included in Annex I shall provide, for consideration by the Subsidiary Body for Scientific and Technological Advice, data to establish its level of carbon stocks in 1990 and to enable an estimate to be made of its changes in carbon stocks in subsequent years. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its first session or as soon as practicable thereafter, decide upon modalities, rules and guidelines as to how, and which, additional human-induced activities related to changes in greenhouse gas emissions by sources and removals by sinks in the agricultural soils and the land-use change and forestry categories shall be added to, or subtracted from, the assigned amounts for Parties included in Annex I, taking into account uncertainties, transparency in reporting, verifiability, the methodological work of the Intergovernmental Panel on Climate Change, the advice provided by the Subsidiary Body for Scientific and Technological Advice in accordance with Article 5 and the decisions of the Conference of the Parties. [...] A Party may choose to apply such a decision on these additional human-induced activities for its first commitment period, provided that these activities have taken place since 1990."

Insert a new paragraph 4 bis:

"4 bis. With a view to meeting its commitments for the second commitment period under Article [...] each Party [included in Annex I] [with a commitment inscribed in Annex B] [may choose to]/[shall] account for any of the following human-induced activities: forest management, cropland management, grazing land management, [and] revegetation [and devegetation, and wetland management]. A party included in Annex 1 shall demonstrate that such activities [have occurred since 1990 and] are human-induced. The accountable anthropogenic greenhouse gas emissions by sources and removals by sinks, resulting from cropland management, grazing land management, revegetation [and devegetation, and wetlands management] under this paragraph, shall be equal to anthropogenic greenhouse gas emissions by sources and removals by sinks in the commitment period, less [five times] [Y] the anthropogenic greenhouse gas emissions by sources and removal by sinks, resulting from these activities [in 1990] [a base period]. The accountable anthropogenic greenhouse gas emissions by sources and removal by sinks, resulting from forest management [and afforestation, reforestation, deforestation] shall be equal to:

- GN with a [cap] [discount factor]
- NN [base year] [base period]
- Bar approach [including a band]"

Insert a new paragraph 7 bis:

"7 bis. In the second quantified emission limitation and reduction commitment period, from [2013] to [...], the assigned amount for each Party included in Annex [B] [I] shall be equal to the percentage inscribed for it in the third column of the table contained in Annex B of its aggregate anthropogenic carbon dioxide equivalent emissions of the greenhouse gases listed in Annex A in 1990, or the base year or period determined in accordance with paragraph 5 above, multiplied by [Y] [*Those Parties included in Annex [B] [I] for whom land-use change and forestry constituted a net source of greenhouse gas emissions in [1990] [a base period] shall include in their 1990 emissions base year or period the aggregate anthropogenic carbon dioxide equivalent emissions by sources minus removals by sinks in [1990] [a base period] from land-use change for the purposes of calculating their assigned amount.*] [*The text in italics would be deleted in case of land-based accounting and may be deleted in case of activity-based accounting.*]"

(land-based approach)

Insert a new subparagraph 1 bis in paragraph 1:

"1 bis. The Parties included in Annex 1 shall, individually or jointly, insure that their aggregate anthropogenic carbon dioxide equivalent emissions by sources and removals by sinks of greenhouse gases listed in Annex A do not exceed their assigned amounts, calculated pursuant to their quantified emission limitation and reduction commitments inscribed in Annex B [...]."

or

Insert a new paragraph 2 bis:

"2 bis. With a view to meeting its commitments for the second commitment period under Article [...] each Party [included in Annex I] [with a commitment inscribed in Annex B] shall account for anthropogenic greenhouse gas emissions by sources and removals by sinks on land use, land-use change and forestry as reported under the UNFCCC by including these emissions and removals in the emissions from the base year, [1990], [and all subsequent years]"

Deletion of Articles 3(3) and 3(4) and the second sentence of Article 3(7) and amendment of Annex A by inserting LULUCF categories.

Other optional amendments

Insert a new paragraph 3 ter:

"The following principles shall govern the treatment of land use, land-use change and forestry activities: add the principles 1(a) to 1(h) of Decision 16/CMP.1."

Insert a new paragraph 4 ter:

"4 ter. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol shall, at its [X] session, adopt modalities and procedures to account emissions and subsequent removals in forest management resulting from extreme disturbances."

Insert a new paragraph 4 quater:

"4 quater. The Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol shall, at its fifth session, adopt modalities and procedures to account for carbon stock changes associated with harvested wood products."

Replace paragraph 8:

"8. Any Party included in Annex I may use 200x as its base year for nitrogen trifluoride, hydrofluoroethers and perfluoropolyethers for the purposes of the calculation referred to in paragraph x above."

Insert a new paragraph 9 bis:

"9 bis. The Conference of the Parties serving as the Meeting of the Parties to this Protocol shall initiate the consideration of the adequacy of commitments and actions under articles [...] and commitments for the third and subsequent commitment periods at least Z years before the end of the second and subsequent commitment periods."

Article 6

Insert a new paragraph 2 bis:

"2 bis. The Conference of the Parties serving as the meeting of the Parties to this Protocol may at its [X] session or as soon as practicable thereafter, revise guidelines for the implementation of this Article, including for improving its effectiveness and efficiency by extending its timing, guaranteeing its environmental integrity, and preparing for new participants."

Article 12

Replace paragraph 6:

"6. The clean development mechanism shall assist in arranging funding of certified project activities as necessary in addition to any other financial support for developing countries for the implementation of low carbon development strategies."

Insert new paragraphs 7 bis and 7 ter:

"7 bis. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its [X] session, revise the modalities and procedures in order to ensure a more equal geographical distribution of CDM projects, sustainable development and the environmental integrity of the clean development mechanism including by establishing:

- (a) benchmarks for baseline setting and determination of additionality for specific project types;
- (b) discount factors for application to issuance of certified emission reductions for specific clean development mechanism project types as an alternative in situations where it is not feasible to establish baselines on the basis of benchmarks;
- (c) criteria on the primary technology employed in the relevant sector;
- (d) a rules based approach to decision making.

7 ter. A project may only be registered in economically more advanced developing countries if the relevant host country Party has submitted its most recent national emissions inventory when required."

Article X - Sectoral Crediting

Insert a new article:

- "1. A sectoral crediting mechanism is hereby defined.
2. The purpose of the sectoral crediting mechanism shall be to:

- (a) enable Parties to strengthen their contribution to the ultimate objective of the Convention and to access carbon markets;
 - (b) assist Parties included in Annex I in achieving compliance with part of their quantified emission limitation and reduction commitments under Article 3;
 - (c) promote sustainable development.
3. The sectoral crediting mechanism shall be subject to the authority and guidance of the Conference of the Parties serving as the meeting of the Parties to this Protocol and be supervised by [a body].
4. Parties not included in Annex I that have absolute sectoral emission thresholds and meet the requirements, *mutatis mutandis*, set out in paragraph 2 of the Annex to Decision 11/CMP1 may participate in sectoral crediting under this Article.
5. Parties not included in Annex I may propose absolute sectoral emission thresholds, as part of their low-carbon development strategy.
6. [Certified emissions reductions/other fungible units] may be issued [by a body] in respect of sectoral emissions reductions beyond the absolute emission threshold.
7. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall, at its [X] session, elaborate modalities and procedures for the:
 - (a) preparation, submission, review and approval of proposals for inscribing absolute sectoral emission thresholds;
 - (b) monitoring, verification and reporting of emissions and accounting of units.
8. The modalities and procedures shall as a minimum ensure that:
 - (a) Parties absolute emission thresholds for the relevant sectors should deviate significantly from business as usual emissions and be established in a conservative manner taking into

account, *inter alia*, the most efficient techniques, procedures, substitutes and alternative production processes,

- (b) independently verified data and projected emissions in the relevant sector are taken into account;
- (c) methodologies for estimating and accounting sectoral greenhouse gas emissions in a conservative manner are available;
- (d) sectoral emissions are effectively monitored, reported and reviewed;
- (e) there is a clear definition of sectoral boundaries;
- (f) the crediting period for [certified emission reductions/other fungible units] shall be [X] years;
- (g) absolute sectoral emissions thresholds are reviewed every [X] years;
- (h) leakage is minimised to the extent possible;
- (i) revenue derived from sectoral emission reductions are additional to any other financial support for NAMAs."

Article 17

Replace Article 17:

"1. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall define the relevant principles, modalities, rules and guidelines, in particular for verification, reporting and accountability for emissions trading.

2. The Parties included in Annex B may participate in emissions trading for the purposes of fulfilling their commitments under Article 3, subject to paragraph 7 and meeting the requirements set out in paragraph 2 of the Annex to Decision 11/CMP1.

3. The Parties not included in Annex B that have sectoral emission targets and meet the requirements, *mutatis mutandis*, set out in paragraph 2 of the Annex to Decision 11/CMP1 may, subject to paragraph 8, participate in emissions trading.

4. Parties not included in Annex B may propose sectoral emission targets, as part of their low-carbon development strategy.
5. The Conference of the Parties serving as the meeting of the Parties to this Protocol shall at its [X] session elaborate modalities and procedures for the:
 - (a) preparation, submission, review and approval of proposals for sectoral emission targets;
 - (b) monitoring, verification and reporting of emissions and accounting of units.
6. The modalities and procedures shall as a minimum ensure that:
 - (a) sectoral emission targets should deviate significantly from business as usual emissions and be established in a conservative manner taking into account, *inter alia*, the most efficient techniques, procedures, substitutes and alternative production processes,
 - (b) independently verified data and projected emissions in the relevant sector are taken into account;
 - (c) methodologies for estimating and accounting sectoral greenhouse gas emissions in a conservative manner are available;
 - (d) sectoral emissions are effectively monitored, reported and reviewed;
 - (e) there is a clear definition of sectoral boundaries;
 - (f) the trading period for [assigned amount/fungible units] shall be [X] years;
 - (g) sectoral emission targets are reviewed every [X] years;
 - (h) leakage is minimised to the extent possible;
 - (i) revenue derived from sectoral emission reductions are additional to any other finance support for NAMAs
- 6 bis. The Conference of the Parties serving as the meeting of the Parties shall also consider possible modalities and procedures for the recognition of units created under mandatory emissions trading systems in non Annex B countries, thereby ensuring environmental integrity.
7. Any trading pursuant to paragraph 2 shall be supplemental to domestic actions for the purpose of meeting quantified emission limitation and reduction commitments under Article 3.

8. Any trading pursuant to paragraph 3 shall be supplemental to domestic actions for the purpose of meeting sectoral emission targets under paragraph 3."

Article Y: Transitional provisions and double counting in relation to mechanisms

Insert a new article:

"The Conference of the Parties serving as the meeting of the Parties to this Protocol shall at its [X] session define modalities and procedures which:

- (a) prevent double counting between the mechanisms defined by Articles 6, 12, X-Sectoral crediting and 17 and other support;
- (b) provide for an orderly transition between mechanisms where the mechanisms in Articles 12A and 17(3) have been implemented by the Parties in the sectors where these mechanisms apply;
- (c) ensure credits issued from clean development mechanism project activities registered before [XXXX] will continue to be issued [until XXXX];
- (d) exclude new clean development mechanism projects in sectors for which absolute sectoral emission thresholds or targets are defined."

Article 21

Option A

Replace paragraphs 4, 5 and 7:

"4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex other than Annex A, B [or ...] shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. Amendments to Annex A, B [and...] shall be adopted by consensus and in relation to Annex B [and ...] only with the written consent of the Party concerned. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex other than Annex A, B [or...], that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.

7. Amendments to Annexes A, B [or...] to this Protocol shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex.”

Option B

Replace paragraphs 4 and 5:

"4. The Parties shall make every effort to reach agreement on any proposed annex or amendment to an annex by consensus. If all efforts at consensus have been exhausted, and no agreement reached, the annex or amendment to an annex other than Annex A, B [or ...] shall as a last resort be adopted by a three-fourths majority vote of the Parties present and voting at the meeting. Amendments to Annexes A, B [or...] to this Protocol shall be adopted by consensus only. The adopted annex or amendment to an annex shall be communicated by the secretariat to the Depositary, who shall circulate it to all Parties for their acceptance.

5. An annex, or amendment to an annex, that has been adopted in accordance with paragraphs 3 and 4 above shall enter into force for all Parties to this Protocol six months after the date of the communication by the Depositary to such Parties of the adoption of the annex or adoption of the amendment to the annex, except for those Parties that have notified the Depositary, in writing, within that period of their non-acceptance of the annex or amendment to the annex. The annex or amendment to an annex shall enter into force for Parties which withdraw their notification of non-acceptance on the ninetieth day after the date on which withdrawal of such notification has been received by the Depositary.”

Article Z: Immunities for individuals serving on constituted bodies

Insert a new article:

1. Individuals serving as members or alternate members of bodies constituted under this Protocol shall be accorded such immunities as are necessary for the independent exercise of their functions. These immunities shall only apply to activities in connection with the exercise of their official functions. They shall be accorded:

(a) In respect of words spoken or written and acts done by them in the course of the performance of their function, immunity from legal process of every kind. This immunity from legal process shall continue to be accorded notwithstanding that the persons concerned are no longer members or alternate members of bodies constituted under this Protocol;

(b) Inviolability for all papers and documents.

2. Immunities are granted to members and alternate members for the efficient performance of their official functions and not for the personal benefit of the individuals themselves. The Executive Secretary to the United Nations Framework Convention on Climate Change shall have the right and the duty to waive the immunity of any member or alternate member in any case where, in his or her opinion, the immunity would impede the course of justice and it can be waived without prejudice to the interests of the operation of this Protocol.

3. Constituted bodies referred to in paragraph 1 above are the Executive Board of the Clean Development Mechanism, the Joint Implementation Supervisory Committee, the compliance committee and the expert review teams established under Article 8 of the Kyoto Protocol.²

² The EU is continuing its analysis on the issue of privileges and immunities and may provide additional views on the treaty arrangements at a later stage.

Annex A

Amend Annex A:

"

- Include the following gases:

Carbon dioxide (CO₂)

Methane (CH₄)

Nitrous oxide (N₂O)

Hydrofluorocarbons (HFCs)

Perfluorocarbons (PFCs)

Perfluorinated Compounds

 Sulphur hexafluoride (SF₆)

 Nitrogen trifluoride (NF₃)

Hydrofluoroethers/ Fluorinated Ethers (HFEs)

Perfluoropolyethers (PFPMIE)

- Include the following sectors:

Energy

Fuel combustion activities

 Energy industries

 Manufacturing industries and construction

 Transport

 Other sectors

 Non-Specified

Fugitive emissions from fuels

 Solid fuels

 Oil and natural gas

 Other emissions from energy production

Carbon Dioxide Transport and Storage

 Transport of CO₂

Injection and Storage

Other

Industrial processes and product use

Mineral industry

Chemical industry

Metal industry

Non-energy products from fuels and solvent use

Electronics Industry

Fluorinated substitutes for ozone depleting substances

Other Product Manufacture and Use

Other

[Agriculture, forestry and other land use and aggregate sources and non-CO2 emissions sources on land]

*Note: The bracketed text reflects the main changes introduced for this sector in the 2006 IPCC guidelines (LULUCF vs. AFOLU). The main difficulty at this point in time as regards the bracketed text is the lack of agreement on LULUCF accounting. The unbracketed parts are those categories that reflect the agriculture categories currently included in Annex A with some small additions. Further work on this issue is necessary in the negotiating context.

Livestock

Enteric fermentation

Manure management

[Land

Forest land

Cropland

Grassland

Wetlands

Settlements

Other land]

Aggregate sources and non-CO₂ emissions sources on land

- Greenhouse gas emissions from biomass burning

- Liming

- Urea application

- Direct N₂O emissions from managed soils

- Indirect N₂O emissions from managed soils

- Indirect N₂O emissions from manure management

- Rice cultivation

- Other

[Other

- Harvested wood products

- Other]

Waste

- Solid waste disposal

- Biological treatment of solid waste

- Wastewater treatment and discharge

- Incineration and open burning of waste

- Other

- Other

- Indirect N₂O emissions from the Atmospheric deposition of nitrogen in NO_x and NH₃

- Other"
