

EU PROPOSAL TO INTRODUCE AN EXPEDITED PROCEDURE TO AMEND THE MONTREAL PROTOCOL

QUESTIONS & ANSWERS

1. What is the objective of the proposed expedited amendment procedure?

- The proposed procedure would enable new substances to be controlled much more quickly than is currently the case. This would be achieved by providing that amendments introducing new substances would enter into force within a significantly shorter period.
- This will render the Protocol more effective by enabling a more timely response to new scientific knowledge and environmental needs.

2. How does the expedited procedure operate?

- The operation of the proposed expedited procedure is simple, not complicated.
- Once the decision to add a substance to an Annex, in accordance with the currently applicable rules and procedures, is adopted by the MOP, the amendment will enter into force two years later for those Parties which have accepted the expedited procedure. Any such Party would still have the possibility to 'opt-out' by indicating that it does not wish to be bound by that addition to the Annex. They will have two years to make use of this possibility, by notifying the depositary (i.e. the Secretary-General of the UN – Article 20 of the Vienna Convention). If it so wishes, any such Party could subsequently agree to be bound by the amendment by a notification to that end.
- Thus, because of the safeguard of an 'opt-out', Parties which have accepted the expedited procedures can never be bound by an amendment to an Annex (an addition of a substance) against their will.
- Parties which have not accepted the expedited procedure will express their consent to be bound by the amendment in the same way as they currently do.

3. Will the proposed expedited procedure alter the way in which amendments are proposed, or adopted by the MOP?

- No - it is important to note that the current procedures to propose and adopt an amendment to an Annex (that is, to add a substance to an Annex) would remain unchanged.

- Thus, the introduction of an expedited procedure will:
 - (a) not touch upon the assessment process under Article 6 of the Protocol;
 - (b) not alter the procedure for the proposal of an amendment to an Annex, set forth in Article 9 of the Convention;
 - (c) not alter the procedure in the MOP of adoption of an amendment, set forth in Article 9 of the Convention.

4. Will the application of the expedited procedure create an additional layer of commitments or grouping of Parties?

- No, it will not - the expeditious nature of the proposed procedure relates to timing and entry into force only.
- The current procedure creates two groups of Parties: those Parties in, what may be called here, group A, which (already) have expressed their will to be bound by an addition of a substance to an Annex, and those Parties in group B, which have not (yet) done so.
- With an expedited procedure in place, the same two groups of Parties will exist, with no new category, or layer of commitments, added.
- With an expedited procedure, the only difference will be (a) that the number of Parties in group A will increase more rapidly compared to the current system, and (b) that the most notable increase in those numbers will occur on the date of the expiry of the two years after the MOP decision to add a substance to a Annex.
- It should also be stressed that the proposed expedited procedure would not alter the current differentiation between commitments for Annex 5 and non-Annex 5 Parties.

5. How will the expedited procedure itself enter into force?

- The expedited procedure itself will enter into force like any other amendment.
- Thus, the EU proposal provides that the expedited procedure enters into force:
 - (a) Upon a certain specified date (currently 1 January 2006), provided that at least twenty Parties have ratified, accepted or approved it; or,
 - (b) Should that number not be reached by that specified date, ninety days after the twentieth ratification, acceptance or approval.

- There is one condition for the ratification of the expedited procedure (see Article 2 of the EU proposal) - a Party may only deposit an instrument of ratification, acceptance, approval or accession to this amendment, when it has previously, or simultaneously, deposited such an instrument with respect to the most recent substantive amendment (which is the Beijing Amendment of 1999).
- This condition is set for reasons of procedural clarity and transparency, not to make ratification of the expedited procedure amendment a prior condition of subsequent amendments (for the latter issue, see the next question).
- It would be procedurally unclear when a Party adheres to the expedited procedure, when conclusion of the Beijing Amendment is still pending for that Party – would it be bound to the Beijing Amendment in accordance with the expedited procedure, or with the procedure of ratification, acceptance, approval, or acceptance? It is prudent to avoid any confusion in this regard – hence this one condition for adhering to the expedited procedure, laid down in Article 2 of the proposal.

6. What is the relationship of the expedited procedure with future substantive amendments?

- It is standard practice under the Protocol that a Party may not ratify, accept, approve, or accede to a substantive amendment, unless it has previously, or simultaneously, ratified, accepted, approved or acceded to the earlier substantive amendment. For example, a Party cannot ratify the Beijing amendment of 1999, unless it has ratified, or ratifies at the same time, the Montreal amendment of 1997.
- The amendment which introduces an expedited procedure should be excepted from this standard practice.
- The proposed procedural amendment would thus be separated from any future substantive amendment introducing additional substances. In that way, a Party which would not (yet) be able to ratify the expedited procedure would still be in a position to adhere to any future substantive amendment adding substances to an Annex.

7. Will the expedited procedure affect control measures related to trade?

- No, it will not.
- However, having in mind that the expedited procedure will speed up the entry into force of an amendment, and compared to the current

procedure, its logical effect will be that control measures related to trade will come into play quicker.

- These effects generate direct and tangible benefits for the ozone layer and its protection. However, the EU understands that such effects may raise concerns. Hence, we are open to discuss and consider the pros and cons of these effects with other Parties.