Report of the intersessional working group on the Regional Environmental Management Plans

Facilitated by the Kingdom of the Netherlands

Introduction and background

The intersessional working group on the Regional Environmental Management Plans started its work after the first part of the thirtieth session of the Council. A total of five meetings were convened: four online meetings and one hybrid meeting in Kingson during the second part of the thirtieth session of the Council.

During the first meeting, the group agreed on the scope of the intersessional working group. The group would focus on the discussion relating to the question if the Regional Environmental Management Plan adopted for a particular area and type of resource concerned must be applied. Only regulations and topics falling within this scope were discussed by the group.

Outcomes of the discussions

Understanding of the working of the Regional Environmental Management Plan

The group discussed the working of the Regional Environmental Management Plan in practice by using an example from the Dutch legal system. The following analysis was discussed.

The group can decide to include in the Draft Regulations a binding obligation on the Commission to use the Regional Environmental Management Plan in its decision-making on the proposed Plan of Work. Under this obligation, the Commission shall assess if the Plan of Work is consistent with the applicable Regional Environmental Management Plan. The Regional Environmental Management Plan helps the Commission in assessing individual cases in a fair and structured way.

In the situation where the Commission finds that the Plan of Work is not consistent with the applicable Regional Environmental Management Plan, the Commission shall request the Contractor to amend its Plan of Work to ensure that the applicable Regional Environmental Management Plan is appropriately reflected and incorporated in the Plan of Work.

As a consequence, (parts of) the Regional Environmental Management Plan will only be made binding for the Contractor through its Plan of Work. In accordance with, article 153, paragraph 3, of the Convention, the Plan of Work shall be in the form of an Exploitation Contract. Therefore, a breach of a Plan of Work constitutes a breach of the Exploitation Contract.

The group agreed that textual proposals could be drafted by the facilitator on the basis of this discussion.

Textual proposals

On the basis of the foregoing explanation on the working of the Regional Environmental Management Plan, the facilitator drafted textual proposals.

The first draft textual proposals presented a new Regulation 15bis, introducing the possibility to create terms and conditions relating to the Regional Environmental Management Plan. In accordance with this new Regulation, the Commission could provide with any recommendation of approval of a proposed Plan of Work, terms and conditions to ensure that the applicable Regional Environmental Management Plan is appropriately reflected and incorporated in the specific Plan of Work under approval. If the Council approves these terms and conditions, the Secretary-General would prepare an Exploitation Contract incorporating the terms and conditions.

In several meetings the group discussed that it would be desirable if the Exploitation Contract would be exactly the same for all Contractors. Any differences between Contractors should be reflected in the Plan of Work. This approach would be simpler and better fits with the Regulations as currently drafted. Therefore, the facilitator presented a second draft textual proposal, still incorporating the same understanding of how the Regional Environmental Management Plan would work in practice. This second textual proposal is the final textual proposal as now presented to Council.

Overarching issues

During one of the meetings the group discussed the consequence for the Contractor in the situation where the Regional Environmental Management Plan changes over time. It was recognized that this would be a likely scenario since the Regional Environmental Management Plan is a living document and, according to the standardized procedure[1], will be reviewed at the latest every five year.

The group discussed that some changes to the Regional Environmental Management Plan might indeed require a change in the Contractor's activities. However, the group also recognized the need for stability in guiding the Contractor in its work. The discussion on how to deal with new information in relation to the activities of the Contractor does not concern only the discussion on the Regional Environmental Management Plan. This is a broader problem, which Council should deal with. The group agreed that this issue is a cross-cutting and overarching issue to be flagged to Council. It would probably be best to deal with this problem in Regulation 57 'Modification of a Plan of Work by a Contractor' and Regulation 58 'Review of a Plan of Work'.

[1] ISBA/30/C/3/Rev.1.