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NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	Second informal consultations on negotiations for a Legally Binding Agreement on Forests in Europe 27 - 29 January 2020, Geneva - <i>Summary report</i>

1. Introduction

This meeting is the second round of informal consultations aiming at reaching an agreement on the terms of negotiation on a Legally Binding Agreement - LBA - on forests in Europe under UNECE auspices, with the support of FAO. Since these consultations are informal, the UNECE Secretariat will not write an official report.

2. Purpose and format of the informal consultations

Following the adoption, in December 2018, in Bratislava, in the context of FOREST EUROPE, of a Ministerial Declaration setting up the mandate for resuming of negotiations for a Legally Binding Agreement (LBA) on Forests in Europe, the Deputy Prime Minister of the Slovak Republic (current Chair of Forest Europe) transmitted to the UNECE Executive Secretariat a letter inviting "UNECE, with the support of FAO" to resume the negotiations under their umbrella.

The purpose of the 2nd round of informal consultations in Geneva was twofold:

- to allow the 2 delegations - Russian Federation and Belarus - who did not have a position during the 1st round to make their position known; and
- to finalise the text of a draft Decision to be adopted by the UNECE Executive Committee together with the Terms of Reference of the future negotiating group, clarifying the timing and the terms of the negotiations.

The 2nd round of informal consultations continued in the same set-up as the previous one, chaired by the Belarus Ambassador to the UN (currently the chair of the UNECE Executive Committee), who again handed over the role to a 'Friend of the Presidency - or - Facilitator', Mr. Aljoscha REQUARDT (DE).

During the informal consultations, the EU spoke with one voice. The EU interventions were based on the positions of the EU and its Member States (EUMS) agreed by the Council Working Party on Forestry (doc. 10966/19 REV 2). The EU Delegation in Geneva, the HR Presidency and the Commission took the floor in turns, depending on the burden sharing agreed in the practical arrangements set out in doc. 5020/13 - complemented by doc. 10497/19 REV 1, which proved to be a very positive approach and underlined the strong EUMS position.

3. Main issues and positions of other countries

The atmosphere of the 3 day informal consultations was positive, albeit with a certain degree of tension following the interventions of the Russian Federation and sometimes of the USA.

It was obvious that all delegations were waiting to see the position of the Russian Federation (hereinafter 'RF') and the degree of their involvement in the negotiations. This was the biggest question mark, since everybody was very much aware that the success of the informal consultations depended on how constructive and flexible RF would be. RF had had 3 months to consider the position of the other delegations, so they started the 2nd round from a privileged position.

RF made a general statement at the start of the informal consultations, stating that the RF could engage only if 2 important conditions were accepted by the other participants, namely that:

1. The whole Draft Negotiating Text (hereinafter 'DNT'), including the paragraphs previously agreed *ad referendum* in the Intergovernmental Negotiating Committee, could be reopened in the negotiations. This was a matter of principle for them. Furthermore, RF repeated that they did not acknowledge the Bratislava Ministerial Decision;
2. The negotiations would not begin earlier than 2021, because RF was in the process of adopting new national legislation on forests, as well as because of the time required for the internal coordination process.

Both these pre-conditions were difficult for the EUMS. However, the UNECE Secretariat explained that because of the various procedural steps still to be taken, the most optimistic timeline would push the negotiations to early October 2020 anyway. So, 2021 was not, in fact, unrealistic.

The reopening of the whole DNT, though, remained the main problem for the EU. To try to bridge the two opposing positions - EUMS and RF -, the UNECE Legal Advisor proposed a compromise, stating that the reopening of the provisions already agreed *ad referendum* could only be done in order to reflect significant recent policy developments, which was in line with paragraph 3 of the Bratislava Ministerial Declaration endorsed by the Council.

This proposed compromise was already at the limit of the EUMS position. However, in the last day of negotiations, the RF went back to square one and rejected the compromise, proposing that each provision of the DNT should be revisited on its own merits, regardless of any conditions.

The latest request of RF went clearly beyond the EUMS mandate, as it fully removed the references to the “paragraphs agreed *ad referendum*”. However, it strengthened the wording, as it requires that “*consensus is reached using DNT*”, which is stronger than EU position that “*the DNT will serve as a basis*”. After a series of bilaterals between EU and RF, with the help of the Friend of the Chair and the UNECE Secretariat, a new clean compromise text was proposed, on the understanding that this text would be sent to the capitals for examination/approval.

The final text keeps other key points for the EUMS:

- the position of the EU as a party to the negotiations and to the ultimate LBA is ensured;
- the countries that negotiated the LBA in the past will participate in the negotiations and later on in the future agreement, while others may be observers;
- the duration of the negotiations is reduced to 1 year, for the purpose of brevity and efficiency.

The USA had a constructive attitude; they said that they would not stand in the way of a new agreement on forests in Europe, nor with negotiations to continue under UNECE, but restated their main concern, namely:

- that a UNECE ExCom decision makes the involvement of all UNECE countries implicit, and USA does not want to become party to the future agreement;
- the USA position is that the agreement should be a strictly European process, limited to the list of 54 signatories of the Bratislava Ministerial Declaration. Eventually, USA agreed to work with the UNECE Secretariat on language which should clarify this issue.

Canada supported USA many times and very explicitly stated that they do not want to become a party to the future agreement.

Belarus did not take the floor during the 2nd round of informal consultations.

Switzerland was very active in the consultations, with many constructive suggestions.

Norway was active and constructive, and supported the EU in most interventions.

Ukraine was also very active, and supported the EU position on several issues.

Turkey took the floor to offer to host all of the three foreseen negotiating meetings.

5. Main outcomes and next steps

The draft ExCom Decision and the ToR were examined several times, containing different compromise texts. The input of the Friend of the Chair and of the UNECE Legal Advisor was behind most of them.

Final results:

- a new clean compromise draft ExCom Decision and its Terms of Reference for the future Negotiating Group (in ADD 1 to this report);
- a roadmap for the next steps, as follows:
 - if all countries agree with the above compromise text, the text will be submitted to the UNECE Executive Committee for approval on 6 May 2020, provided that enough financial pledges are made before that date;
 - if any of the participating countries does not agree the compromise text, then a 3rd round of informal consultations will be organised on 23 or 26 March 2020, back to back with the Working Party on Forest Statistics, Economics and Management (24-25 March 2020);
 - the UNECE Secretariat presented a project proposal (in ADD 2 to this report) for servicing the negotiations of a Legally Binding Agreement on forests in Europe hosted by UNECE, to be sent to the EXCOM once the Decision and ToR would be agreed;
 - The estimated budget for the project is 878.000,00 USD. The UNECE Secretariat explained that the estimated may change and that it is not the final version.
