



TECHNICAL BACKGROUND FOR A MINISTERIAL DECISION ON NEGOTIATING A LEGALLY BINDING AGREEMENT ON FORESTS IN EUROPE

Compilation of the technical results of the Working Groups (2008-2010)

8 November, 2010

1. Introduction

At the Fifth Ministerial Conference on the Protection of Forests in Europe, 5-7 November 2007 in Warsaw, Poland, a proposal was tabled to begin a process for exploring the possibility of a legally binding agreement on forests in the European region. Two Working Groups were set up successively and charged with dealing with the following tasks. The first group, WG1, was mandated to explore the potential added value of and possible options for a legally binding agreement on forests in the pan-European region. The second group, WG2, was required to prepare options for a decision on a possible legally binding agreement on forests in Europe and to produce a Non-Paper that sets out options for a legally binding agreement.

This paper presents a brief summary of the outcomes of the comprehensive scoping exercise and technical preparations that resulted from the work of both groups. It will be presented to the ELM on its meeting 14-15 December 2010. More detailed analysis and reports developed by the WGs on a possible legally binding agreement of forests in Europe can be found at:

http://www.foresteurope.org/eng/What_we_work_for/Legally_Binding_Agreement/

2. Emerging challenges and opportunities regarding forests and forestry in Europe¹

- While European forests are expanding in area and timber stocks, the consequences of climate change put their vital functions and mere existence under threat.
- Sustainably managed forests have an enormous potential to provide a multitude of goods and services for a sound environment, sustainable economic development and the quality of life of millions of Europeans.
- Sustainable forest management requires effective means:
 - to protect forests against biotic and abiotic damages and to balance diverse demands;
 - for bridging potential conflicts of interests with regard to forests, arising e. g. from the request for reliable carbon sequestration, the need for maintaining and enhancing vitality, resilience and biodiversity, and the rising demand for renewable biomass;
 - to conserve, restore and increase biological diversity;
 - to adapt forests to climate change;

¹ In this report it is referred to the Europe's area as the area covered by the FOREST EUROPE signatory states

- o for enabling forest owners and managers to carry out sustainable management practices; and
 - o for enhancing cooperation between relevant sectors and more coherence in policies affecting forests at all levels.
- The existing European concept for sustainable forest management, developed and promoted by FOREST EUROPE lacks full recognition by all relevant institutions and needs consistent implementation.

Forests cover 44 % of the land area of the wider European region, including the Russian Federation, which constitutes 25 % of the world's forests². The forest area has expanded by almost 13 million ha in the past 15 years, mainly due to planting and natural expansion of forests onto former agricultural land. The amount of wood in Europe's forests is growing by around 360 million cubic metres per year, of which on average two-thirds is currently harvested annually.

Sustainable forest management in Europe is a holistic approach, balancing environmental, economic, social and cultural functions of forests. FOREST EUROPE signatories agreed, already in 1993, that sustainable forest management means the stewardship and use of forests and forest lands in a way, and at a rate, that maintains their biodiversity, productivity, regeneration capacity, vitality and their potential to fulfil, now and in the future, relevant ecological, economic and social functions, at local, national, and global levels, and that does not cause damage to other ecosystems.³

Sustainable forest management in Europe increasingly promotes biological diversity. The area of protected forests has been expanding by about 2 million ha in the period 2003-2007 to reach almost 5 percent of Europe's forests. Management practices are modified to take biological diversity into account, and more deadwood is available in the forests. The expanding forest volume is also considerable carbon storage of importance in the global greenhouse gas balance. In 2005, 53 gigatonnes of carbon were stored in the European forest biomass, an increase of 2 billion tonnes since 1990. Further substantial amounts of carbon are stored in forest litter and soils, and also in lasting forest products.

However, the European forests remain vulnerable to natural hazards. The expected consequences of climate change combined with other pressures on forests present a severe threat to both their vital functions and their long term existence. There is therefore an urgent need for adapting forests to climate change by increasing their resilience and preventing catastrophic events caused by storms, pests, diseases, fires, drought and desertification.

At the same time, the forest sector has the potential to make a huge, active contribution to the mitigation of climate change. In addition to carbon storage in lasting forest products, wood and forest biomass represent renewable resources which can replace fossil materials and reduce reliance on fossil fuels. The IPCC Fourth Assessment Report underlines that "in the long term, sustainable management of forests will generate the largest sustained mitigation benefit. To achieve these benefits, sustainable forest management should aim at maintaining or increasing forest carbon stocks, while also producing an annual yield of timber, fiber or energy from the forest" (IPCC Working Group III 2007).

Forests play an active role in the sustainable development and well-being of European society. Sustainably managed forests have the potential to contribute substantially to a green economy, including through generating jobs and income, in particular in rural areas. However, the economic viability of the forest and forest industries sector in Europe has been of concern for some time. The recent global economic crisis have affected forest industries and reduced investments in forest management. This accentuates the need for reducing market distortions, such as illegal logging and unsustainable practices, and for ensuring the viability and maintenance of know-how in the downstream industries.

Surveys on public perceptions of forests and forestry⁴ show that interest in ecosystem services from forests has increased significantly. In a global perspective, one of the public's main concerns is the

² *STATE OF EUROPE'S FORESTS 2007; to be updated when key features of STATE OF EUROPE'S FORESTS 2011 are available*

³ *Helsinki Resolution 1, 1993*

⁴ *Europeans and their Forests, MCPFE 2003, The Europeans and Wood, MCPFE 2007, Shaping forest communication in the European Union: public perceptions of forests and forestry; study, financed by the European Commission; final report September 2009*

prevention of deforestation. In Europe, people expect forests to play a vital role in tackling climate change and wish for a more active management towards forest protection and forest services. Opinion surveys are just one type of indication of the increasing demand concerning ecosystem services provided by forests. The demands include biodiversity conservation, recreation opportunities and the regulation of freshwater, protection of soil, safeguarding the infrastructure of settlements by preventing erosion and avalanches, as well as forest benefits for human health. Combined with the growing demand for carbon neutral renewable energy and commodities, this development creates new opportunities for forest based economic activities. At the same time it requires effective mechanisms to balance conflicting interests.

The complex challenges faced by forests in a rapidly changing environment and society cannot be addressed through measures in the forestry field alone. There is a need for better coherence in forest-related policy making, and strengthened relationships and synergies among different sectors that affect forests. In addressing these complex challenges the importance of research and the contributions by the scientific community has increased respectively.

At the international level, European states and the European Union and its Member States have been advocates and active promoters of an effective global forest regime since 1993.⁵ A strengthened policy framework in the European region would back up these global efforts with knowhow, exemplification and credibility.

The European region's shared approach to forests is reflected in the concept, principles and practices of sustainable forest management. This common understanding aims at comprehensively securing the long-term economic, environmental and social functions of forests, and achieving this in a balanced manner. However, the framework for sustainable forest management does not have a common legal basis and is therefore not fully recognised by relevant institutions and policies affecting European forests.

FOREST EUROPE has a good record of addressing forest-related challenges. Whilst past commitments are important, new challenges occur, bringing with them increased complexity and new dimensions. This particularly applies to the expected consequences of climate change, the protection of forests against natural hazards and the increased demands for renewable commodities and ecosystem services.

The present situation calls for a new robust political solution that delivers a significantly strengthened policy framework on forests in the pan-European region.

3. Strengthening the policy framework and possible type of a legally binding agreement – continuum of alternatives

FOREST EUROPE, founded in 1990, is a high-level forest policy process. FOREST EUROPE has developed the conceptual framework of sustainable forest management in the pan-European region. The process has also resulted in a range of means and instruments aimed to facilitate national implementation of sustainable forest management. 46 signatory countries and the European Union, as well as several observer organisations and countries participate in FOREST EUROPE on a voluntary basis.

A strengthened policy framework could take the form through different alternatives aimed at improving co-operation and enhancing implementation of sustainable forest management across Europe. The following graph presents a simplified illustration of alternatives for strengthening commitments on forests in Europe. This graph includes legally binding and voluntary options:

1. Voluntary cooperation

The FOREST EUROPE signatory countries and the EU have 20 years of experience with the existing voluntary cooperation on forest policy issues in Europe. Future cooperation on forest policy could con-

⁵ *Helsinki General Declaration (1993), Lisbon General Declaration (1998), as well as to several Council Conclusions of the EU*

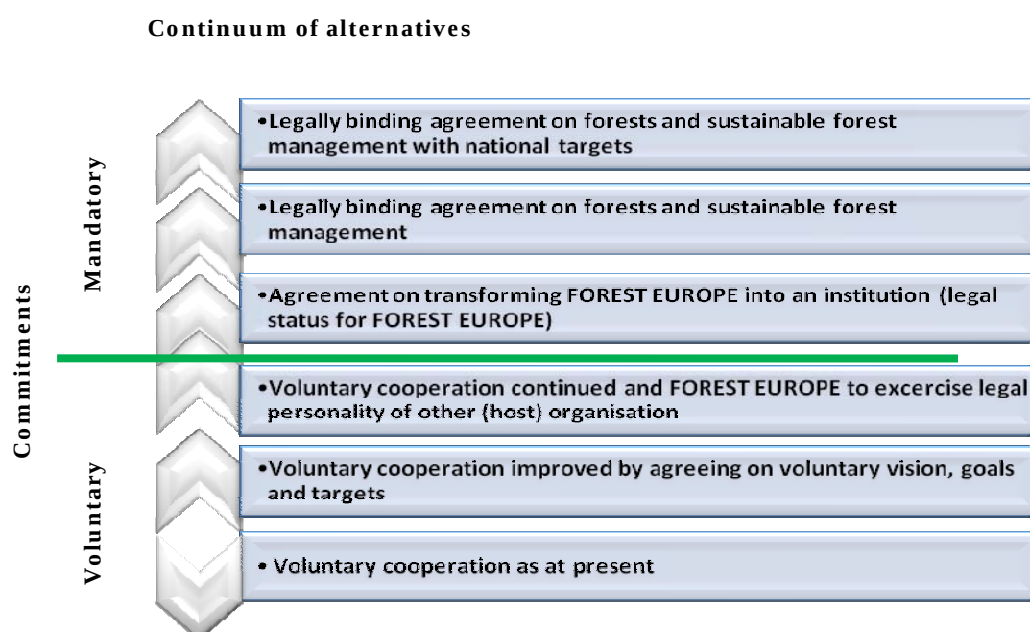
tinue as present. Alternatively, FOREST EUROPE could strengthen the ambitions and improve its role in providing policy solutions and facilitating implementation of sustainable forest management. A way to strengthen the ambitions could be to set clear and ambitious voluntary goals and targets for forests in Europe. A more prominent role of FOREST EUROPE in providing policy solutions and facilitating implementation will most probably require a stronger financial basis for the process. Given a continuation of cooperation on a voluntary basis, the activities and work will also have to be founded on available resources provided on a voluntary basis. The FOREST EUROPE would still lack the legal personality unless it's placed within another institution to exercise a legal personality of the host.

2. Legally binding options (mandatory)

Strengthening a policy framework on forests in Europe could have a form of a legally binding agreement. Within this option, at one end of a spectrum such an agreement could be a framework agreement on forests and their sustainable management. The commitments could be broad, while at the same time providing flexibility for parties to develop standards and measures at the national level in order to reach the overall objectives of the agreement. Detailed commitments could be specified in protocols to a framework agreement or in future measures developed by the governing bodies of the agreement. A legally binding agreement on forests and their sustainable management should aim at providing a better framework for policy responses to new and emerging challenges and demands from forests. Such an agreement could include all pillars of sustainable forest management and aim at its effective implementation across Europe. The content and level of commitments as well as the possible institutional arrangements, including bodies and procedures will ultimately determine the architecture of the agreement. At the other end it could be an agreement on sustainable forest management with national targets for each country, on which countries could report progress towards.

Alternatively, the signatories of FOREST EUROPE could develop an agreement which provides legal personality to FOREST EUROPE (constitutive instrument), transforming FOREST EUROPE into an institution.

The *Non-paper on a possible legally binding agreement on forests in Europe* may serve as a source of examples for potential elements for any legally binding agreement. However, the decision on content and structure of an agreement can be taken only during negotiation process.



A strengthening framework of cooperation on forests in Europe could contain a decision on developing a legally binding agreement and continuing voluntary cooperation in parallel.

4. Added value of a possible legally binding agreement on forests in Europe as compared to voluntary commitments and cooperation

Forests need long term planning and long term investments. Forests can be harvested in 50 - 100 years or even more, not in 1 or few years. With the view to maintain and enhance forest resources, their vitality and resilience in the long term, forests need a stable, effective and long-term platform for policy development and implementation.

Added value of a possible legal instrument on forests in Europe will depend on the level of commitments and national needs and priorities. Added value for each of the signatory states may vary due to their different needs and state of forests. Consequently, the potential added value of a legally binding agreement would need to be assessed at national level.

The following points below provide an overview of the assessment by the working groups of added value at regional level.

A legally binding instrument on forests in Europe would:

- provide a stable and long-term framework to address all three pillars of sustainable forest management in an equal manner across Europe, by achieving an internationally agreed legal definition of sustainable forest management and by agreeing upon common principles for sustainable development of forests in Europe;
- strengthen implementation of sustainable forest management through applying agreed common principles when formulating national policies, and allow to measure more precisely progress in implementation across the continent, through harmonised monitoring assessment and reporting;
- set common objectives and goals for forests in Europe and provide the framework for achieving them;
- operationalise the implementation of internationally agreed objectives and goals related to forests and in particular those on climate change and biodiversity, and demonstrate Europe's commitment to solving global problems;
- foster existing commitments towards eliminating illegal logging through improved coordination and a long term approach towards forest governance;
- provide visibility and raise political awareness on the importance of forest resources and their potential for development in Europe, and at the same time position forests and the sector stronger among other sectoral policies and instruments;
- promote consistency in policies and legislation related to forest across Europe and provide a platform for addressing new emerging challenges and developing responses to them;
- set a stage for developing means to bridge potential conflicts of interests with regard to forests, and give a long term stable framework for enhanced cooperation on forests with other sectors and civil society, including major groups and NGOs;
- provide for developing measures to effectively protect, restore and increase forest biodiversity in Europe and apply the ecosystem approach to forests through further development and implementation of sustainable forest management;
- raise the effectiveness of national forest programmes as a tool for delivering sustainable development of forests in Europe, and in particular to secure public participation in national forest policy development;

- provide a modern platform for participation in decision-making on forests in Europe and development of partnerships and innovative mechanisms for public participation, e.g. in councils and chambers;
- provide stable conditions for forest management throughout the European region and therewith the basis for long-term investments in the forest sector;
- provide a framework for developing enabling conditions that will enhance competitiveness, employment and development of rural areas, and enhance the contribution of European forests to a green economy in the region and beyond;
- improve governance on forests through strengthened institutional capacities and legislation;
- improve efficiency of cooperation on forests in Europe by providing an adequate institutional framework;
- improve and streamline information on forests in Europe through common provisions on information needed and coherent approaches to information gathering;
- provide a better framework for communication and outreach on forests;
- encourage research and evidence base for informed decision making on forests.

A legally binding agreement might also have disadvantages as compared to voluntary arrangements, such as costs of negotiations and loss of flexibility.

5. Possible impact of a legally binding agreement on other legislations, instruments and processes

The following assessment was developed on the basis of the *Non-paper on a possible legally binding agreement on forests in Europe*, as developed by the WG2.

The Non-legally Binding Instrument on All Types of Forests (NLBI)

There is no global treaty that focuses solely on forests and their management. The attempts under the auspices of the United Nations have lead to the Non-legally Binding Instrument on All Types of forests (NLBI). A legal agreement on forests in Europe would be supportive to the NLBI and contribute to implementation of the NLBI at the regional level. A legal agreement in Europe could also encourage other regions to strive for strengthened implementation of sustainable forest management.

The Convention on Biological Diversity, the United Nations Framework Convention on Climate Change and the UN Convention on Combating Desertification

Three relevant international environmentally oriented treaty regimes from the perspective of a possible legally binding agreement on forests in Europe are the Convention on Biological Diversity (CBD), the United Nations Framework Convention on Climate Change (UNFCCC) with the Kyoto Protocol and the UN Convention on Combating Desertification (UNCCD).

Any specific measures or commitments affecting biodiversity to be considered within a legal agreement on forests should remain in full coherence with the CBD. The example commitments outlined in the Non-paper elaborated by the Working Group on preparing options for a decision on a possible legally binding agreement on forests in Europe aims at promoting biological diversity and supporting related goals (biological diversity is understood as part of sustainable forest management, *MCPFE Helsinki Resolution 1*). A possible legal instrument could create synergies for the conservation of biodiversity in European forests.

Similarly, any specific measures or commitments on climate change or desertification considered within a legal agreement on forests should remain in full coherence with the principles and commitments stemming from the UNFCCC framework and the UNCCD. The example commitments outlined in the Non-paper (cf. above) aim at promoting climate adaptation and mitigation measures in European forests and to strengthen efforts against desertification in the forest sector.

The UNECE Timber Committee

The UNECE/FAO Forestry and Timber Section, through the joint programme of work of the UNECE Timber Committee and the FAO European Forestry Commission, covers all the different areas and aspects of sustainable forest management, ranging from forest resources and products markets to policies and the socio-cultural dimensions. Therefore, the Section disposes of the expertise to cover the areas described in the current Non-paper and to work with member States on the implementation of a legally binding agreement which addresses these issues.

Already, for many years, the UNECE/FAO Forestry and Timber Section has coordinated and led the process of reporting on the State of Europe's Forests and preparing the reports. These reports present an overview of the progress in sustainable forest management as measured by the FOREST EUROPE Criteria & Indicators, and have been for consideration by the respective ministerial conferences. In this context, should countries in Europe decide to negotiate a legally binding agreement, the Forestry and Timber Section has proven expertise that could be used in coordinating the assessment of the implementation of a legally binding agreement, through periodic implementation reports, which could focus on the Criteria and Indicators, but could also have a broader scope.

The role of the European Union

While the Lisbon Treaty does not include a specific EU competence in forestry, many aspects of EU legislation and policies effectively affect forests, forestry, or the forest-based sector. A number of possible commitments identified in the Non-paper have links with the objectives of EU legislation and policies on climate change, environment, renewable energy, industrial policy, employment policy, innovation and research. A number of proposed commitments also relate to the objectives of forestry measures included in the Rural Development Regulation, which also may lend support in achieving such commitments.

Should the MS and the EU enter into the negotiation process and conclude an LBA, it would most likely be a mixed agreement, i.e., both the EU and the MS become parties to the agreement. How the EU and its MS participate in the negotiations will be determined by the EU and its MS internally in accordance with the procedures set out in the EU Treaties, as amended by the Lisbon Treaty.

Forest law enforcement and governance initiatives and processes

Measures to combat illegal logging are under development in various regions of the world. Both the NLBI and the International Tropical Timber Agreement refer to trade related measures to combat illegal logging. One of the means being utilised in Europe is the EU FLEGT Action Plan, which has resulted in an EU regulation concerning voluntary partnership agreements on timber trade and a regulation that restricts placing on the market timber and wood products derived from illegal logging.

In addition, the Forest Law Enforcement and Governance (FLEG) initiatives around the world show the increasing importance of taking measures against illegal logging. The European region (together with North American and North Asian countries) is part of the ENA-FLEG co-operation, which has also addressed trade in timber and wood products originating from illegal logging. The ministerial declaration of ENA FLEG generally endorses the need to combat illegal logging and associated trade.

A legally binding agreement on forests in Europe could strengthen governance and law enforcement and could reinforce and strengthen measures aimed at curtailing illegal logging.

Other processes and bodies

Other international agreements that contain relevant normative guidance from the viewpoint of a possible legally binding agreement on forests in Europe, include the Ramsar Convention on Wetlands, the UNECE Convention on the Protection and Use of Transboundary Watercourses and International Lakes, the Bern Convention and the Convention on the European Forest Institute, as well as the two sub-regional treaties that address similar issues, the Alpine Convention and the Carpathian Convention.

These international treaties do not contain any provisions that are in conflict with the example commitments outlined in the Non-paper elaborated by the Working Group on preparing options for a decision on a possible legally binding agreement on forests in Europe.

It can be noted that the Alpine Convention has been equipped with a legally binding instrument on the protection of the Alpine mountain forests at the sub-regional level (the Mountain Forest Protocol). The Carpathian Convention contains provisions on sustainable forest management and is in the process of developing a Protocol on Sustainable Forest Management for the specific needs of the Carpathian Mountains. Both Protocols refer to sustainable forest management as developed by FOREST EUROPE.

6. Possible negotiation process of a legally binding agreement and its costs

If a decision to develop a legally binding agreement on forests in Europe is taken, the FOREST EUROPE Ministerial Conference will decide on an institutional framework for the negotiation process, establish a negotiation committee, and decide on its mandate and the rules of procedure to be applied by the committee.

Some options could be envisaged for a negotiation process, but it is important to note that the choice of secretariat arrangements for servicing negotiations will not prejudice future decision on secretariat for servicing an agreement once is concluded. A decision on the arrangement and location of a secretariat for servicing an agreement can be taken only during negotiations of the agreement.

1. Negotiations organised in the framework of FOREST EUROPE with the Liaison Unit acting as secretariat for supporting a negotiation process

The FOREST EUROPE General Coordinating Committee, on the request of the Ministerial Conference would establish a secretariat, based on the Liaison Unit, for servicing the negotiations and secure the financial resources needed for the effective operation of the Negotiating Committee. In this option, the Liaison Unit would also serve a continued voluntary FOREST EUROPE process, based on current practice, but utilising synergies in terms of administrative and logistic requirements. This option assumes that costs of a negotiation process are covered by the GCC.

2. Negotiations organised under the UNECE/FAO with the Forestry and Timber Section as secretariat supporting a negotiation process

Once member States in the appropriate UNECE forum agree to negotiate a legally binding agreement as part of its work programme, all costs related to conference servicing (meeting rooms, interpretation in ECE official languages –French, Russian and English- translation and reproduction of official documents) will be covered by the United Nations. There will be no costs charged to member States negotiating. Furthermore, the Forestry and Timber Section could cover the substantive part of current negotiations with existing staff. This would imply the internal re-organisation of roles and responsibilities in order to free one staff member to service the process. Such a re-organisation would need to be done in consultation with the Joint ECE/FAO Bureau. There is also the possibility for the Section to benefit from the secondment of a professional officer from an interested Government or the financing of such a post from extra-budgetary funds (donors).

As far as other administrative costs related to the servicing of the process (conference service, translation and interpretation, etc) are concerned, these would be provided by the UN without additional

costs to member States (as they could be accommodated within the quotas for services provided by the UN Office in Geneva to the UNECE).

In this case due consideration would have to be given on the consequences for the voluntary FOREST EUROPE process, if it was continued. Would it be conducted in parallel to the negotiations, financed and guided by a GCC, and serviced by a Liaison Unit or would the process be put also under the auspices of the UNECE?

3. Negotiations organised under other United Nations agencies

For negotiating an agreement within the United Nations system, rules of procedure need to be agreed or states could decide to apply rules of procedure of a respective governing body (e.g. agreements negotiated within the framework of e.g. UNEP could apply rules of procedure of the Governing Council of the UNEP).

Costs for the negotiations of an international agreement within the framework of the United Nations would be calculated based on standard UN costs for servicing a negotiation process. Depending on the sources of funding of the United Nations body selected for the negotiations, the costs could be financed as part of the regular budget of the United Nations (which is financed by assessed contributions from the States Members of the United Nations), extra-budgetary funds (which are provided by voluntary contributions from Member States, programmes and funds of the United Nations, as well as other organisations), or a combination of both. Setting up special funds for negotiations is also practiced (e.g. ongoing negotiations on a legally binding instrument on Mercury under UNEP).

Also in this case it would have to be clarified if the continued voluntary process would be put under the auspices of the respective UN body or organised in parallel.

4. Negotiations organised under the Council of Europe

Conventions of the Council of Europe are negotiated exclusively within the framework of the Council of Europe. Final decisions on the convention texts are taken by the Committee of Ministers.

Also in this case it would have to be clarified if the continued voluntary process would be put under the auspices of the Council of Europe or organised in parallel.

5. Negotiations organised in the framework of FOREST EUROPE with the Liaison Unit acting as secretariat for supporting a negotiation process and supported by relevant, interested organisations and partners

The FOREST EUROPE General Coordinating Committee, on the request of the Ministerial Conference would establish a secretariat, based on the Liaison Unit, for servicing the negotiations and secure the financial resources needed for the effective operation of the Negotiating Committee.

The Ministerial Conference would also invite the UNECE, FAO, EFI, UNEP and signatories and other partners and interested organisations to support the work of the Secretariat and the negotiation process. A bureau for a negotiating committee should be established according to agreed rules of procedure. In addition, the EFI and other science institutions could bring in pan-European, independent research expertise as well as platform for stakeholder participation.

In this option, the Liaison Unit would also serve a continued voluntary FOREST EUROPE process, based on current practice, but utilising synergies in particular with regard to administrative and logistic requirements. In addition, negotiations could be supported by other organisations in form of providing expertise, seconding staff members to the Liaison Unit, providing platforms for specific discussion, working groups etc, or hosting negotiation meetings.

This option assumes that costs of a negotiation process are covered by the GCC, with possible additional voluntary contributions by other countries and organisations.

Costs estimation⁶

If the activities of the voluntary process that will be carried out in parallel to negotiations is maintained at a similar level as present, the Liaison Unit would be able to service the negotiation process with the present number of staff members, or with possibly 1 additional staff member, depending on allocation of tasks.

The services provided by the Liaison Unit would include: preparation of documents (including drafting), formatting, printing and issuing of documents; preparation of meetings, organisation and servicing; liaison with countries, observers and civil society, as well as other duties specific to the negotiation process. The Liaison Unit would therefore utilise the synergies with regard to administration to allow cost-efficiency.

The negotiation process would need to be supported by additional outsourced services, such as: legal advice, translation and edition of documents, website and media service, similar to how it is done within FOREST EUROPE at present (these tasks are currently outsourced). Specialised organisations and institutions, e.g. the EFI, could be invited to provide scientific advice. Conference services and interpretation (French, Russian, and English) could be covered by the Liaison Unit budget. Specific meetings could be hosted by, and specific tasks supported by interested governments or organisations, similar to the existing practice of FOREST EUROPE.

Given that a negotiation process conducted by FOREST EUROPE would last for two years, costs for the whole negotiation process (as specified above) could be estimated at the level of the current annual costs of running the FOREST EUROPE process. For the year 2010 the costs of running FOREST EUROPE is approximately EUR 890 000.

More precise costs estimation would only be possible when detailed procedures for negotiations are known, e.g. timing and number of meetings.

Rules of procedure for negotiations

A negotiation committee would need to work according to rules of procedure. The Working Group on preparing options for a decision on a possible legally binding agreement on forests in Europe elaborated a detailed proposal to facilitate consideration of rules of procedure for a possible negotiation process (*Consideration of possible Rules of Procedure for the Negotiating Committee to prepare a legally binding agreement on forests in Europe, 29 October, 2010*). The proposal contains the following elements: purpose, definitions, place and dates of sessions, agenda, representation, bureau, secretariat, languages and records, conduct of business, decisions, observers, suspension and amendment of the Rules of procedure.

7. Stakeholders Participation

Stakeholders and NGOs play an increasing role in international negotiations and there are different ways to include their opinion into the negotiation process. They can be invited to be present at the negotiations, they may be allowed to give written or oral statements, and they can provide specific advice to government delegates and submit reports on specific questions. Usually NGOs and stakeholders, if not already accredited to the organisation leading the negotiation process have to be specially accredited for the negotiations by the secretariat and thereafter take part in the negotiations.

8. Possible institutional arrangements for a legally binding agreement

Different institutional arrangements for administering a legally binding agreement can be established. An institutional arrangement, in this context, is meant a secretariat as well as other bodies to be

⁶ Relevant for point 1 and 5.

decided for the purpose of an agreement (Conference of the Parties, subsidiary bodies, etc).

Creating new institution - Legal personality for FOREST EUROPE

One option could be to institutionalise FOREST EUROPE's structures and establishing compliance procedures. This option is based on the assumption of institutionalising the Liaison Unit, the General Coordination Committee and the Expert Level Meeting. Ministerial Conferences, workshops, round tables etc. can be arranged if needed.

Hosting a secretariat of an LBA by existing organisation or instrument

Another option could be to mandate an existing body or instrument to host the secretariat and governing bodies. This option assumes that an agreement would be hosted by an existing international organisation or an agreement, e.g. the FAO, the UNECE, the European Forest Institute, the Council of Europe, UNEP or other. Legal personality is derived from the host organisations in the above options.

While these two main options mentioned above take advantage of existing structures, there are also other possibilities, e.g. hosting of the institutional arrangements by a government (e.g. Alpine Convention).

Which option for institutional arrangements to choose and where to establish a secretariat should be dealt with through negotiations.

9. Possible costs of a legally binding agreement

For the year 2010 the costs for running FOREST EUROPE as a voluntary cooperation is approximately EUR 890 000. This includes costs for operating the secretariat (labour costs, equipment and contract work), meetings of signatories, expert meetings, and meetings of the General Coordinating Committee. The General Coordinating Committee (at present: Norway, Spain, Slovakia, Germany and Poland) provides 95% of the 2010 budget. The rest is voluntary contributions provided by signatory countries. In addition countries and organisations contribute through hosting meetings. The FOREST EUROPE budget is decided by the General Coordinating Committee on a year-by-year basis,

For any strengthening of the framework for forest policy cooperation at the regional level, whether it is to conclude a legally binding agreement or to strengthen the existing voluntary arrangement, there will be a need for additional resources.

Should a legal agreement be put in place there will be two categories of costs: operational administrative costs and costs for implementing commitments.

Costs of administration of the agreement

The costs for administration and operation of a legally binding agreement on forests would depend on what type of institutional arrangement is chosen as well as on the scope of an agreement. This would determine a secretariat functions and would impact the number of needed staff, its qualification and classification, number of meetings required, as well as the range of other activities that a secretariat would be tasked with. Therefore, the budget of an agreement can vary substantially. The costs of the Ramsar Convention, for example, are estimated at the level of USD 5,022 million, with 15 international staff and 2,5 local staff funded under the core budget.⁷ The EFI Convention annual budget is circa EUR 120 000, for comparison.⁸ Therefore once an agreement on forests is developed, including the content and level of commitments, as well as structures of possible bodies, rules and procedures, a comprehensive cost analysis should be carried out to develop possible budget for an agreement.

⁷ Review of the possible change in institutional host for the Ramsar Secretariat, UNEP, 2010

⁸ Information provided by the EFI, October, 2010.

It is important to note that usually all contracting parties are responsible for the financing of the core set of bodies and the necessary administrative work of a legal agreement. Specific criteria can be set up for the calculation of the share each party is to contribute. (e. g. UN assessment scale, population, area of forest cover).

Costs of implementing commitments at national level

Concerning the implementation of commitments, each party should be responsible for own financing as it is now through the implementation of voluntary commitments of the FOREST EUROPE process.

These costs are difficult to estimate and need to be based on national-level assessment once the agreement is concluded.

However, there are many innovative ways to facilitate funding of implementation, e.g., programmes and project-based activities and involvement of the private sector. A regional level financing system could also be established, e.g. to support monitoring or other specific projects. Cost estimates for implementation would be determined by the content and the level of commitments in a legal agreement once it is concluded. In addition, if a legally binding agreement on forests is in place some resources for implementation may be released at national levels, but this may vary from country to country.

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