



## 12<sup>th</sup> MEETING OF THE STANDING COMMITTEE

31 January – 01 February 2017, Paris, France

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### ANALYSIS OF RESOLUTION 2.6, 2. (F) AND RULE 17 OF THE RULES OF PROCEDURE OF THE AEWA STANDING COMMITTEE

#### Introduction

At the sixth session of the Meeting of the Parties to AEWA (MOP6), Parties elected new representatives to the Standing Committee through Resolution 6.16.<sup>1</sup> Later in the session, Norway advised the Chair that it had been made aware of a potentially unfortunate situation: Ghana and Uganda had both served for six years, i.e. two MOP cycles<sup>2</sup>.

Rule 17 of the Rules of Procedure for the Standing Committee states that “*The term of office of regional members and alternates shall expire at the close of the next ordinary session of the Meeting of the Parties following the session at which they were originally elected. Regional members are eligible for re-appointment but may not serve more than two consecutive terms of office.*”

Resolution 2.6 states that “*The membership of the Committee shall be reviewed at each ordinary session of the Meeting of the Parties, in accordance with the rules of procedure of the meeting. The term of office of the members nominated on a geographical basis shall expire at the close of the second ordinary session of the Meeting of the Parties following that at which they have been nominated*”.

Both texts were thoroughly discussed and it was suggested that Resolution 2.6 could lead to a different decision by the Parties than foreseen by Rule 17 of the Rules of Procedure of the Standing Committee. The Parties decided not to reconsider Resolution 6.16 and to instead revisit the points raised intersessionally.

At the 11<sup>th</sup> Meeting of the Standing Committee, which took place on 14 November 2015, immediately after the closure of MOP6, Uganda recalled that during MOP6 a controversial discussion had taken place on the issue whether Standing Committee members could be reappointed after expiration of their term of office. The Secretariat should be asked to undertake an analysis of the Rules of Procedure, so that any amendments potentially required could be worked on intersessionally and a proposal brought forward to MOP7. Uganda added that a requirement should be introduced for the Standing Committee Rules of Procedure to be approved by the Meeting of the Parties.

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<sup>1</sup> Zimbabwe, *inter alia*, nominated Ghana as the Representative for the Western & Central Africa Region, and Uganda as the Representative for Eastern and Southern Africa. There being no further interventions the meeting adopted the Resolution by consensus, thereby electing the Standing Committee for the triennium 2016-2018.

<sup>2</sup> Compare Resolutions 4.17 and 5.17.

The purpose of this document is to analyse Resolution 2.6 and the Rules of Procedure of the AEWA Standing Committee with regard to the maximum duration and possibility of reappointment of regional representatives to the Standing Committee, and to propose a way forward to avoid any ambiguity between Resolution 2.6 and the Standing Committee Rules of Procedure in future.

### **Actions Requested from the Standing Committee**

1. Note the analysis of Resolution 2.6 and the StC Rules of Procedure.
2. Approve the proposal to amend the Rules of Procedure in order to align the wording with Resolution 2.6 and the AEWA Technical Committee Modus Operandi and to open the possibility of re-appointment of Standing Committee regional representatives and alternates after expiration of their term of office.
3. Approve the proposed text to be added to the relevant draft MOP7 Resolution on Institutional Arrangements: Standing Committee.

## I. ANALYSIS

### 1. Historical Background and Wording

#### a) Resolution 2.6

Resolution 2.6 on *Institutional Arrangements: Standing Committee* was adopted at MOP2 (September 2002) to establish the Standing Committee.<sup>3</sup> Moreover, it regulates the term of office of the Standing Committee regional representatives as follows:

**Resolution 2.6 (adopted by MOP2 in September 2002):**

(f) The membership of the Committee shall be reviewed at each ordinary session of the Meeting of the Parties, in accordance with the rules of procedure of the meeting. The term of office of the members nominated on a geographical basis shall expire at the close of the second ordinary session of the Meeting of the Parties following that at which they have been nominated."

[...]

(j) The Committee shall draw up and adopt its own rules of procedure.

According to Resolution 2.6, one term of office of Standing Committee members clearly covers two MOP cycles, i.e. normally six years ("the term of office of the members [...] shall expire at the close of the second ordinary session of the Meeting of Parties following that at which they have been nominated"). This would mean that the term of a member elected at e.g. MOP2 would expire at MOP4. The Resolution does not specify whether a member of the Standing Committee may be reappointed for a second term of office.

The same Resolution suggests that the Standing Committee adopts its own rules of procedure. Unlike the Modus Operandi of the Agreement's Technical Committee, these rules are not, as a matter of course, adopted by the Meeting of the Parties.<sup>4</sup>

#### b) Rules of Procedure of the AEWA Standing Committee

##### **1<sup>st</sup> Meeting of the Standing Committee (November 2003)**

A first draft of the Standing Committee Rules of Procedure was introduced and discussed at the 1<sup>st</sup> Meeting of the Standing Committee in November 2003. The Rules of Procedure had been drafted on the basis of the CMS Standing Committee Rules of Procedure and contained the following text, which can also be found with the same wording in the CMS Rules of Procedure (version of 2003):

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<sup>3</sup> In accordance with this resolution, the AEWA Standing Committee is composed of:

- representatives from five Contracting Parties, based on the principle of balanced geographical distribution;<sup>3</sup>
- a representative of the host country for the next session of the Meeting of the Parties; and
- a representative from the Depositary.

MOP2 also approved five nominations for membership of the Standing Committee, as well as four alternates (see Meeting report MOP2, point 110).

<sup>4</sup> According to Art. VII paragraph 1 of the Agreement text "the procedure for the appointment of the experts, the term of their appointment and the procedure for designation of the Chairman of the Technical Committee shall be determined by the Meeting of the Parties". The Agreement text contains no specific regulations on the Standing Committee, which was established via Resolution in accordance with Art. VI paragraph 9 (e) "At any session of its sessions, the Meeting of the Parties may [...] establish such subsidiary bodies as it deems necessary to assist in the implementation of this Agreement, in particular for coordination with bodies established under other international treaties, conventions and agreements with overlapping geographic and taxonomic coverage [...]."

### **Rule 15 (meanwhile Rule 17)**

*The term of office of regional members and alternates shall expire at the close of the next ordinary meeting of the Meeting of the Parties following the meeting at which they were originally elected. Regional members may not serve more than two consecutive terms of office.*

### **2<sup>nd</sup> Meeting of the Standing Committee (November 2004)**

The Standing Committee approved a revised version of the draft Rules of Procedure at its 2<sup>nd</sup> meeting in November 2004; the relevant Rule was approved with following minor amendment<sup>5</sup>:

### **Rule 14 (meanwhile Rule 17)**

The term of office of regional members and alternates shall expire at the close of the next ordinary session of the Meeting of the Parties following the session at which they were originally elected. Regional members are eligible for re-appointment but may not serve more than two consecutive terms of office.

The StC Rules of Procedure use the same term “term of office” as Resolution 2.6; however, they suggest that this period expires at the close of the next session of the MOP. Thus, under the Rules of Procedure, one term of office is meant to cover one MOP cycle, i.e. normally three years. The same Rule 17 also says that regional members may not serve more than two consecutive terms of office (a 6-year period, which is considered as being two terms of office). While Resolution 2.6 does not specify whether a Standing Committee member could be re-appointed after expiration of his term the, Rules of Procedure state that this is not possible.

## **2. Application of Resolution 2.6 and StC Rules of Procedure - Rule 17**

At the following Sessions of the AEWA MOP, the term of office of Standing Committee members was treated as follows:

### **MOP3 (Oct 2005)**

The meeting report of MOP3 reads:

194. *The Secretariat recalled that the Standing Committee and its current composition had been established at MOP2 through Resolution 2.6. The term of office of current members was due to end at MOP4, but if any members wished to step down in the meantime there would have to be an interim election. Thus, a term of office was understood to last two MOP cycles.*

### **MOP4 (Sep 2008)**

The meeting report of MOP4 reads:

255. *The Executive Secretary introduced document AEWA Res. 4.17 Institutional Arrangements: Standing Committee.<sup>6</sup> He recalled that the current Standing Committee had been appointed at MOP2 and would be stepping down at the end of the present meeting. Nominations were therefore required for Members and Alternates for the following sub-regions [...]*  
*Thus, at that time it was supposed that members needed to step down after two MOP cycles. No mention was made of potential reappointment beyond this period.*

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<sup>5</sup> Rule 14 has not been amended since then (the rule’s numbering did, however, change, which explains why it is Rule 17 in the current version).

<sup>6</sup> Through Resolution 4.17 the Meeting of the Parties approved the list of elected regional representatives for the Standing Committee, including Ghana as Representative for Western and Central Africa and Uganda as Representative for Eastern and Southern Africa.

## **MOP5 (May 2012)**

*Through Resolution 5.17 the Meeting of the Parties approved the list of elected or reconfirmed regional representatives for the Standing Committee, including Ghana as Representative for Western and Central Africa and Uganda as Representative for Eastern and Southern Africa.*

## **MOP6 (November 2015)**

*At MOP6, for the first time Standing Committee members were elected for a third MOP cycle, as decided through Resolution 6.16 (see Introduction to this document). This decision was based on the fact that Resolution 2.6 leaves open the question of whether reappointment for a second term of office is permissible, and thus places no explicit bar on such reappointment. It was further argued that the Meeting of Parties is not bound by Rule 17 of the Standing Committee Rules of Procedure as these have never been adopted by the MOP.*

## **3. Institutional Context**

In the overall context of AEWAs, it is also useful to consider how the membership of regional representatives has been dealt with in the case of the other AEWAs committee, i.e. the Technical Committee (TC). Interestingly, the original TC Rules of Procedure, which were subsequently replaced by the TC Modus Operandi, used very similar wording to that appearing in Resolution 2.6:

### **TC RoP, adopted by Resolution 1.8 and revised by 2.5:**

#### ***Rule 7***

*The term of office of the members shall expire at the close of the second ordinary Meeting following that at which they were elected. At each ordinary meeting of the Meeting of the Parties, elections shall be held only for those regional members whose term of office will have expired at the close of the meeting and for any regional member who indicates a desire to stand down without completing a full term of office. [...]*

The TC RoP were replaced by the TC Modus Operandi, at which stage provision was made for the MOP to extend a member's term of office beyond the ordinary two cycles:

### **TC Modus Operandi, adopted by Resolution 4.18 to supersede the TC RoP:**

#### ***Rule 5***

*The term of office of the regional representatives and the thematic experts shall expire at the close of the second ordinary Meeting of the Parties following that at which they were elected, unless extended by agreement of the Meeting of the Parties. At each ordinary meeting of the Meeting of the Parties, elections shall be held only for those regional members whose term of office will have expired at the close of the meeting and for any regional member who indicates a desire to step down without completing a full term of office. The same provisions shall apply with respect to the alternate members approved in accordance with Rule 2.*

## **II. CONCLUSIONS**

The term “*term of office*” is used differently in Resolution 2.6 (two MOP cycles) and Rule 17 of the Standing Committee Rules of Procedure (one MOP cycle).

This difference in wording obviously goes back to the fact that Rule 17 was taken over from the existing CMS Rules of Procedure and the wording was not aligned with the AEWAs Resolution 2.6. Even if the term “*term of office*” is used differently both texts clearly lead to the conclusion that a regional representative's membership is supposed to last two MOP cycles (i.e. six years).

The Rules of Procedure, however, go further and explicitly exclude the possibility of re-appointment, while Resolution 2.6 is not specific on this question. As the Resolution does not provide any regulation on this question it could be assumed that the Rules of Procedure reflect the intention of the Parties correctly and re-

appointment is not possible. On the other hand, the Rules of Procedure have never been adopted by the MOP, which allows the conclusion that the MOP could still make its own decision, as done at MOP6.

In the meeting history, the Standing Committee membership has been understood as lasting two MOP cycles until MOP6 where the re-appointment of Standing Committee members was controversially discussed and Standing Committee members were re-appointed.

The AEWA Technical Committee works with the same definition of “*term of office*” as Resolution 2.6. With the adoption of the TC Modus Operandi at MOP4, the Meeting of the Parties introduced the possibility for TC members to stay longer than two MOP cycles, if their term is extended by agreement of the Meeting of the Parties. A similar regulation could be introduced with respect to the Standing Committee.

To address this potential contradiction in AEWA documents it would be advisable to introduce a clear provision on the possibility of re-appointment of Standing Committee members and to align all relevant documents in agreement with the Meeting of Parties.

### III. PROPOSAL

1. In order to align the term “*term of office*” used in the Standing Committee Rules of Procedure with Resolution 2.6 and the Modus Operandi of the AEWA Technical Committee and to open the possibility of re-appointment of Standing Committee regional representatives and alternates after expiration of their term of office the Secretariat suggests to amend **Rule 17 of the Rules of Procedure** as follows:

#### **Draft Rule 17**

*The term of office of regional members and alternates shall expire at the close of the ~~next~~ second ordinary session of the Meeting of the Parties following the session at which they were originally elected. ~~Regional members are eligible for re-appointment but may not serve more than two consecutive terms of office. Regional members and alternates can be re-appointed for one additional term of office by agreement of the Meeting of the Parties. At each ordinary meeting of the Meeting of the Parties, elections shall be held only for those regional members whose term of office will have expired at the close of the meeting and for any regional member who indicates a desire to step down without completing a full term of office.~~*

2. Moreover, to ensure the backing of the Meeting of the Parties it is suggested to add the following paragraph in the relevant MOP7 draft Resolution:

#### **Draft Resolution 7.XX Institutional Arrangements: Standing Committee**

[...]

*Recalling* Resolution 6.16 through which the Parties elected two of the new representatives to the Standing Committee for a third consecutive MOP cycle;

*Also recalling* that the Parties, after a controversial discussion on the question whether such re-appointment after six years was in line with Resolution 2.6, decided not to reconsider Resolution 6.16, but to revisit the points raised to be considered intersessionally.

[...]

The Meeting of the Parties:

[...]

*Adopts* the Rules of Procedure of the AEWA Standing Committee as set out in Appendix 1 to the present Resolution;

*Agrees* that members nominated on a geographical basis may be re-appointed for one additional term of office by agreement of the Meeting of the Parties after expiration of their term of office.

[...]