

NOTE ON THE COMPOSITION OF THE ACCOBAMS BUREAU



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Note of the Secretariat:

During MOP8 (Malta, 29 November-2 December 2022), Italy introduced a proposal to amend the Rules of Procedure for the Meeting of the Parties, adopted in 2013 by MOP5. The proposed modification aimed at increasing the number of Vice-Chairpersons up to a maximum of 6, instead of the current 4. Italy explained that their proposal envisaged a better representativity of the Parties in the Bureau given the difference in the number of countries in each of the 4 ACCOBAMS sub-regions. MOP8 concluded by mandating the Bureau to consider the Italian proposal during the intersessional period, and to submit their recommendation to MOP9.

The Bureau addressed this matter during its 15th Meeting (Monaco, 22-23 November 2023), its 17th Meeting (Monaco, Hybrid, 13-14 February 2025), and the 6th Extended Bureau Meeting (Nice, 23–24 April 2025).

Following these discussions, the Bureau concluded the following:

- the Italian proposal does not conflict with the ACCOBAMS Agreement;
- however, it would require amendments to the Rules of Procedure for both the Meetings of the Parties and the Bureau;
- implementing the proposed amendments would be complex, as it would involve significant procedural and administrative challenges, including the addition of an annex specifying geographical regions and Parties;
- the decision regarding whether or not to increase the number of Vice-Chairpersons should be taken by the Meeting of the Parties

The Bureau also emphasized the importance of ensuring continuity between successive Bureau compositions.

The present note is divided into three parts. The [first part](#) is the note received from Italy on 12 October 2023. The [second part](#) consists of a legal analysis of the composition of the ACCOBAMS Bureau with information on the composition of similar subsidiary bodies in other intergovernmental organisations. The [third part](#) provides a note on the implications of the proposed Italian amendments concerning the composition of the ACCOBAMS Bureau.

PART I. NOTE RECEIVED BY ITALY ON 12th OCTOBER 2023

Amendment to Article 8 of the RoPs MOP of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and contiguous Atlantic area (ACCOBAMS)

EXPLANATORY NOTE BY ITALY

During the 8th Meeting of the Parties (MOP8) of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) held in Malta from 29 November to 2 December 2022, Italy proposed to amend Article 8, paragraph 2 of the Rules of Procedure of the Meeting of Parties, as follows:

Currently, paragraph 2 of the above-mentioned article states that “*At the commencement of the first sitting of each ordinary Meeting, a Chairperson and ~~a maximum of four~~ up to a maximum of 6 Vice Chairpersons shall be elected from among the representatives of the Parties present at the Meeting, based on informal consultations conducted by the Secretariat.*”

The proposal to raise the number of Vice Chairpersons from four to a maximum of six, is based on the following considerations:

ACCOBAMS area is divided into four macro regions, two of which are composed by a higher number of Countries (eight in Western Mediterranean, nine in Central Mediterranean, six in Eastern Mediterranean and five in the Black Sea), as showed in the scheme below.

Regions	Parties	Numbers of Countries
Western Mediterranean and contiguous Atlantic area	Algeria, France, Italy, Monaco, Morocco, Portugal, Spain, Tunisia	8
Central Mediterranean	Albania, Croatia, Greece, Italy, Libya, Malta, Montenegro, Slovenia, Tunisia	9
Eastern Mediterranean	Cyprus, Egypt, Greece, Lebanon, Syria, Türkiye	6
Black Sea	Bulgaria, Georgia, Romania, Türkiye, Ukraine	5

The natural consequence is that Countries listed in Western and Central Mediterranean regions have less chances to access the Bureau, while the opportunity to be elected should be equally guaranteed.

Moreover, as stated in Article 1 lett. c) Of the RoPs of the Bureau, *the Bureau shall represent the Parties vis-à-vis the Government of the Host Country of the Agreement Secretariat and the Meeting of the Parties, the Depositary and other international Organizations on matters relating to the Agreement and its Secretariat.* In this view, with the current setting of only four vice chairs within the Bureau, geographical representation risks to be unbalanced. Finally, considering that the Bureau provides general policy guidance and operational and financial direction to the Agreement Secretariat and the subregional Co-ordination Units concerning the implementation and promotion of the Agreement, an increase in the number of members will contribute to guarantee a balance between several factors, including:

- the transparency of work;
- the institutional memory of the organisation;
- the generational change;
- the gender representation.

PART II. ANALYSIS ON THE COMPOSITION OF THE ACCOBAMS BUREAU*Legal analysis by Tullio Scovazzi¹*

1. Terms of Reference	5
2. The Functions of the ACCOBAMS Bureau	5
3. The Composition of the ACCOBAMS Bureau	6
4. The Rules Applying to Bureaus under Some Other Agreements	7
4.1 Bonn Convention	7
4.2 ASCOBANS	8
4.3 AEWA	8
4.4 EUROBATS	9
4.5 Barcelona Convention	10
4.6 OSPAR	10
4.7 General Remarks on Bureaus in Other Agreements	11
5. Legal Aspects of the Italian Proposal.....	11
6. Conclusion.....	13

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1. Terms of Reference

The legal consultant is asked to present a paper on the questions relating to conclusion 11 of the fifteenth meeting (22-23 November 2023) of the Bureau of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (Monaco, 1996; ACCOBAMS)².

During the eighth Meeting of the Parties (2022), Italy introduced a proposal to amend Art. 8, para. 2, of the Rules of Procedure for the Meeting of the Parties in order to increase the number of vice-chairpersons of the Bureau up to a maximum of six, instead of the current four. Italy explained that the proposal envisages a better representativity of the Parties in the Bureau, given the difference in number of countries in each of the four ACCOBAMS sub-regions. While three Parties were ready to accept the Italian proposal, 16 Parties asked to postpone its consideration to the subsequent Meeting of the Parties, stressing the need for time to assess its implications. The eighth Meeting of the Parties mandated the Bureau to consider the proposal during the intersessional period and to submit a recommendation to the ninth Meeting of the Parties.

At the Bureau Meeting of 22-23 November 2023, the ACCOBAMS Secretary presented to the Bureau a note received from Italy on 12 October 2023³ regarding the proposal.

After having discussed the matter, the Bureau adopted conclusion 11, providing as follows:

“The Bureau did not approve the Italian proposal and requested the Secretariat to prepare a document for the Sixteenth Bureau Meeting, with information on the composition of similar subsidiary bodies in other intergovernmental organisations”.

2. The Functions of the ACCOBAMS Bureau

In certain cases, multilateral agreements establish a Bureau (also called Standing Committee), as a subsidiary organ to the Meeting (or Conference) of the Parties, in order to provide during the inter-sessional period policy, financial and administrative guidance to the Parties and the Secretariat of the agreement.

Art. VI, paras. from 2 to 4, of the ACCOBAMS addresses the functions of the Bureau

“(…) 2. The Bureau shall:

- a) provide general policy guidance and operational and financial direction to the Agreement secretariat and the Co-ordination units concerning the implementation and promotion of the Agreement;
 - b) carry out, between sessions of the Meeting of the Parties, such interim activities on its behalf as may be necessary or assigned to it by the Meeting of the Parties; and
 - c) represent the Parties vis-à-vis the Government(s) of the host country (or countries) of the Agreement secretariat and the Meeting of the Parties, the Depositary and other international organizations on matters relating to this Agreement and its secretariat.
3. At the request of its Chairperson, the Bureau shall normally meet once per annum at the invitation of the Agreement secretariat, which shall inform all Parties of the date, venue and agenda of such meetings.
4. The Bureau shall provide a report on its activities for each session of the Meeting of the Parties which will be circulated to all Parties in advance of the session by the Agreement secretariat”.

The Bureau, which has the responsibility to express the policy of the ACCOBAMS in the light of the spirit of the Agreement and of the decisions of the Meeting of the Parties, exercises a number of operational and financial

² See *Report of the Fifteenth Meeting of the ACCOBAMS Bureau*, ACCOBAMS-BU15/2023/Doc13, p. 8.

³ Annex 2 to BU15/2023/Doc11.

functions that are assigned to it during the intersessional period between one Meeting of the Parties and another⁴ and are relevant for the implementation of the Agreement. The Bureau is also granted the capacity to represent the ACCOBAMS Parties vis-à-vis certain governments or international organizations. Moreover, according to the amended text of its Rules of Procedure (Resolution 6.4, adopted in 2016), the Bureau is entrusted with the task of appointing the ACCOBAMS Executive Secretary (Art. 1, para. 1, lett. d) and is entitled to waive the immunities of the ACCOBAMS staff members (Art. 1, para. 2).

Art. 1, para. 3, of the Rules of Procedure for the Bureau explicitly provides that

“All members and alternate members of the Bureau shall exercise their functions in their personal capacity and shall not represent any single ACCOBAMS Party”.

It thus appears that, in the ACCOBAMS context, the members of the Bureau, without representing any single Party, are called to exercise their functions in the general interest of the Parties as a whole.

3. The Composition of the ACCOBAMS Bureau

Art. VI, para. 1, of the ACCOBAMS addresses the composition of the Bureau as follows:

“1. The Meeting of the Parties shall elect a Bureau consisting of the Chairperson and Vice-Chairpersons of the Meeting of the Parties, and shall adopt rules of procedure for the Bureau, as proposed by the Agreement secretariat. The Chairperson of the Scientific Committee shall be invited to participate as an observer in the meetings of the Bureau. Whenever necessary, the Agreement secretariat shall provide secretariat services”.

While the Meetings of the Parties is the decision-making organ of the ACCOBAMS, in which all the Parties are represented, the composition of the Bureau, which is a subsidiary organ of the Meeting of the Parties, is restricted only to some of the Parties. A precise ratio between the number of Parties and the number of members of the Bureau is not indicated in the Agreement.

The composition of the Bureau, as consisting of the Chairperson and the Vice-Chairpersons of the Meeting of the Parties, cannot be changed, unless a formal amendment of the Agreement is adopted and enters into force according to the procedure established by Art. X⁵.

However, the Agreement does not specify how many Vice-Chairpersons of the Meeting of the Parties (and, consequently, how many members of the Bureau) may be elected. This specification is found in Art. 8, para. 2, of the Rules of Procedure for the Meeting of the Parties, as revised by the Fifth Meeting of the Parties (2013):

“At the commencement of the first sitting of each ordinary Meeting, a Chairperson and a maximum of four Vice Chairpersons shall be elected from among the representatives of the Parties present at the Meeting, based on informal consultations conducted by the Secretariat”.

⁴ While the Meeting of the Parties is convened at intervals of not more than three years (Art. III, para. 2, of the ACCOBAMS), the Bureau normally meets once every year (Art. VI, para. 6, of the ACCOBAMS) and at least twice between two Meetings of the Parties (Art. 2, para. 1, of the Rules of Procedure for the Bureau).

⁵ “1. This Agreement may be amended at any ordinary or extraordinary session of the Meeting of the Parties. 2. Proposals for amendments to the Agreement may be made by any Party. The text of any proposed amendment and the reasons for it shall be communicated to the Agreement secretariat not less than one hundred and fifty days before the opening of the session. The Agreement secretariat shall transmit copies forthwith to the Parties. Any comments on the text by the Parties shall be communicated to the Agreement secretariat not less than sixty days before the opening of the session. The Secretariat shall communicate to the Parties, as soon as possible after the last day for submission of comments, all comments submitted by that day. 3. Any additional annex or any amendment to the Agreement other than an amendment to its annexes shall be adopted by a two thirds majority of the Parties present and voting and shall enter into force for those Parties which have accepted it on the thirtieth day after the date on which two thirds of the Parties to the Agreement at the date of the adoption of the additional annex or amendment have deposited their instruments of acceptance with the Depositary. For any Party that deposits an instrument of acceptance after the date on which two thirds of the Parties have deposited their instruments of acceptance, the additional annex or amendment shall enter into force on the thirtieth day after the date on which it deposits its instrument of acceptance. (...)”.

It thus appears that the number of the members of the Bureau depends on the choice made by the Meeting of the Parties when electing the Vice-Chairpersons. It can presently range between two (one Chairperson and one Vice-Chairperson) and five (one Chairperson and four Vice-Chairpersons)⁶.

Unlike the Agreement, the Rules of Procedure for the Meeting of the Parties “may be amended as required by decision of the Meeting” (Art. 28 of the same Rules of Procedure). Accordingly, the proposal to change the number of members of the Bureau is presented by Italy as an amendment to the Rules of Procedure to the Meeting of the Parties.

In this regard, it should be recalled that the Rules of Procedure are adopted by the Meeting of the Parties (Art. III, par. 7, lett. a, of the ACCOBAMS) and that all decisions of the Meeting of the Parties in matters covered by the Agreement are adopted by *consensus* (Art. III, para. 6, of the ACCOBAMS)⁷. In international practice, *consensus* is understood as the adoption of a decision without a formal voting and in the absence of any request for voting.

4. The Rules Applying to Bureaus under Some Other Agreements

4.1 Bonn Convention

Under the Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 1979), which is presently binding on 133 Parties, a number of operational functions are exercised by the Standing Committee within the policy agreed to by the Conference of the Parties. The functions, which have been lastly regulated by Resolution 9.15 adopted in 2008 by the Conference of the Parties, are the following:

- “(a) Provide general policy and operational direction to the Secretariat;
- (b) Provide advice and assistance to Parties concerning implementation of the Convention;
- (c) Carry out, between one meeting of the Conference of the Parties and the next, such interim activities on behalf of the Conference as may be necessary or explicitly assigned to it;
- (d) Provide guidance and advice to the Secretariat on the preparation of agendas and other requirements of meetings and on any other matters brought to it by the Secretariat in the exercise of its functions;
- (e) Oversee, on behalf of the Parties, the development and execution of the budget of the Secretariat as derived from the Trust Fund and other sources and also all aspects of fundraising undertaken by the Secretariat in order to carry out specific functions authorised by the Conference of the Parties, and oversee expenditures of such fund-raising activities; (...)
- (f) Represent the Conference of the Parties, vis-à-vis the Government of the host country of the Secretariat’s headquarters, the United Nations Environment Programme and other international organisations for consideration of matters relating to the Convention and its Secretariat;
- (g) Submit at each ordinary meeting of the Conference of the Parties a written report on its work since the previous ordinary meeting;
- (h) Draft resolutions or recommendations, as appropriate, for consideration by the Conference of the Parties;
- (i) Act as the Bureau at meetings of the Conference of the Parties until such time as the Conference Rules of Procedure are adopted; and
- (j) Perform any other function as may be entrusted to it by the Conference of the Parties” (para 1).”

The composition of the Standing Committee of the Bonn Convention is the following:

“The Membership of the Standing Committee shall be agreed at each meeting of the Conference of the Parties in accordance with the Conference’s Rules of Procedure (...) and shall comprise:

- (i) three parties elected from each of the geographic regions (a) Africa and (b) Europe;
- (ii) two parties elected from each of the geographic regions (a) Asia and (b) South and Central America and the Caribbean;
- (iii) one party from each of the geographic regions (a) North America and (b) Oceania;

⁶ In fact, for the three first trienniums (2002-2010), the Bureau was composed of four members and for the subsequent five trienniums (2011-2025) of five members.

⁷ Voting can take place only in respect of matters covered by the annexes to the Agreement, if *consensus* cannot be achieved.

- (iv) the Depositary and Host Government of the host of the Secretariat; and
- (v) where appropriate, the Host Government of the next and previous meetings of the Conference of the Parties” (para. 2).

As it can be seen, the Standing Committee, which is normally composed of 15 members, is based on regional representation. Resolution 9.15 sets forth the duties of regional representatives in the following way:

- “(a) to maintain a fluid and permanent communication with the Parties of their region and the Secretariat;
- (b) wherever possible, to request opinions from Parties of their regions on items under consideration by the Standing Committee; and
- (c) to report on their activities and communications at meetings of the Committee, and at any regional meetings that take place during the COP [= Conference of the Parties] or inter-sessionally” (para. 5)”.

The Standing Committee usually meets immediately before and after the Conference of the Parties and then once a year.

4.2 ASCOBANS

It does not appear that a Bureau has been established within the framework of the Agreement on the Conservation of Small Cetaceans of the Baltic, North East Atlantic, Irish and North Seas (New York, 1992; ASCOBANS). Ten States are parties to the Agreement.

4.3 AEWA

The Standing Committee of the Agreement on the Conservation of African-Eurasian Migratory Waterbirds (The Hague, 1995; AEWA), which has today 85 parties, was established under Resolution 2.6, adopted in 2005 by the Meeting of the Parties. The resolution recalls that, “pursuant the Agreement, the Meeting of the Parties may establish such subsidiary bodies, as it deems necessary to assist in the implementation of the Agreement, in particular for coordination with bodies established under other international treaties, conventions and agreements with overlapping geographic and taxonomic coverage”, and notes that “no provisions have been made to provide guidance and advice to the Secretariat on policy, financial and administrative matters, which the Secretariat may need to raise between sessions of the Meeting of the Parties”.

Accordingly, in view of the “usefulness of a small permanent committee for matters relating to the organization of meetings and for the continuous implementation of the Agreement”, the Meeting of the Parties decided to establish a Standing Committee whose functions are the following:

- “(a) Carry out between sessions of the Meeting of the Parties, such interim activity on behalf of the Meeting as may be necessary;
- (b) Make recommendations for consideration at the next session of the Meeting of the Parties;
- (c) Oversee, on behalf of the Parties, the development and execution of the Secretariat’s budget as derived from the Trust Fund and other sources, and also all aspects of fund-raising undertaken by the Secretariat in order to carry out specific functions authorized by the Meeting of the Parties;
- (d) Oversee, as the representative of the Meeting of the Parties, the implementation of policy by the Secretariat and conduct of the Secretariat’s programmes;
- (e) Provide guidance and advice to the Secretariat on implementation of the Agreement, on the preparation of meetings, and on any other matters relating to the exercise of the Secretariat's functions brought to it by the Secretariat;
- (f) Represent the Meeting of the Parties, vis-à-vis the Government of the host country of the Secretariat’s headquarters, the United Nations Environment Programme and other international organizations for consideration of matters relating to the Agreement and its Secretariat;
- (g) Act as bureau at the sessions of the Meeting of the Parties, in accordance with the rules of procedure of the Meeting of the Parties;
- (h) Report to the Meeting of the Parties on the activities that have been carried out between ordinary sessions of the Meeting of the Parties;

(i) Perform any other functions that may be entrusted to it by the Meeting of the Parties” (para. 1).”

As regards the composition of the Standing Committee, Resolution 2.6 takes into account the criterion of balanced geographical distribution for five out of its seven members:

“The Committee shall consist of not more than seven Contracting Parties, which shall be appointed by the Meeting of the Parties. For at least five of these members, the appointment shall be based upon the principle of balanced geographical distribution, reflecting two representatives from the Europe and Central Asia region, one representative from the Middle East and Northern Africa region, one representative from the Western and Central Africa region, and one representative from the Eastern and southern Africa region. The remaining two members shall comprise the host country for the next session of the Meeting of the Parties and a representative from the Depositary” (para. 2, lett. a).”

As regards the duties of regional representatives, according to the Rules of Procedure of the AEWA Standing Committee,

“Each regional member shall act on behalf of its entire region. In performing their role as regional representatives, members shall accomplish the following duties:

- (a) Circulate all relevant correspondence received by the Secretariat to each Party in their region;
- (b) Inform all Parties in their region about the proceedings and decisions made during Standing Committee meetings;
- (c) Lead consultations within Parties in their region to decide on common AEWA regional issues;
- (d) Follow up on requests made by the Secretariat in correspondence with Parties of their region, e.g. by promoting the revision of comments or enquiries regarding draft meeting reports, completion of National Reports, provision of inputs on documents, and completion of questionnaires on specific issues related to the Agreement;
- (e) Ensure, to the extent possible, a coordinated flow of information from Parties in the region to the Secretariat and vice versa;
- (f) Promote the drafting and/or revision of relevant documents to be examined by the Meeting of the Parties at its sessions, e.g. proposals for amendments to the Agreement and its annexes, draft Resolutions and Recommendations;
- (g) Coordinate the compilation of information and the completion of reports on relevant activities in their region to be submitted to meetings of the Committee, and to any regional meetings that take place during the MOP [= Meeting of the Parties] or intersessionally;
- (h) Receive from Parties in the region, and coordinate where appropriate the formulation and the submission of proposals to the Chairperson of the Committee for a decision by postal procedure in accordance with Rule 36;
- (i) Encourage Parties in the region to update the Secretariat with actual information about the national Focal Points as well as to promptly inform the Secretariat in cases of changes;
- (j) Maintain regular contact to non-Party Range States in their region and promote their accession to AEWA” (Rule 14).”

4.4 EUROBATS

Under Resolution 5.8 adopted in 2006, as amended by Resolution 6.17 adopted in 2010, the Meeting of the Parties to the Agreement on the Conservation of Populations of European Bats (London, 1991; EUROBATS), which has presently 39 parties, decided to establish a Standing Committee, whose functions are the following:

- “(a) Carry out, between one meeting of the Meeting of the Parties and the next, such interim activities as may be necessary to execute the decisions of the Meeting;
- (b) Monitor the execution and the development of the EUROBATS budget;
- (c) Oversee the implementation of policy by the Secretariat;
- (d) Provide guidance and advice to the Secretariat on the implementation of the Agreement, on the preparation of meetings, and on any other matters brought to it by the Secretariat;
- (e) Represent, where appropriate, the interests of the Meeting of the Parties, vis à vis the Government of the host country of the Secretariat's headquarters, UNEP and other international organisations for consideration of matters relating to the Agreement and its Secretariat;
- (f) Perform any other function as may be entrusted to it by the Meeting of the Parties; and
- (g) Submit through its Chair at each ordinary meeting of the Meeting of the Parties a report on its work since the previous ordinary meeting, including any recommendations concerning its role and effective operation;

(h) Make recommendations, as appropriate, for consideration at the next Session of the Meeting of Parties. In particular it shall closely liaise and co-operate with the Advisory Committee in the development and review of draft resolutions that are intended to be submitted for consideration and possible adoption by the Meeting of Parties” (Art. 1).

Moreover, Resolution 8.1, adopted in 2018, provides that

“the Meeting of the Parties (...) Instructs the Standing Committee to review possible arrears in contributions on a regular basis and to decide upon funding for the participation in Meetings of the Agreement of representatives of the countries concerned” (para. 7).

As regards the composition of the Standing Committee, Resolution 5.8 provides that due regard must be given to geographical distribution:

“(a) The Committee shall consist of no more than eight Parties, and shall include a representative from the Depositary Government, the Host Government of the Secretariat and six elected members, who shall be nominated by each Meeting of the Parties, with due regard to geographical distribution; (...)” (Art. 2).

4.5 Barcelona Convention

According to Art. 19 of the Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean (Barcelona, 1976; amended in 1995), which has a number of Parties (22) comparable to that of the Parties to the ACCOBAMS (24),

“1. The Bureau of the Contracting Parties shall be composed of representatives of the Contracting Parties elected by the Meetings of the Contracting Parties. In electing the members of the Bureau, the Meetings of the Contracting Parties shall observe the principle of equitable geographical distribution.

2. The functions of the Bureau and the terms and conditions upon which it shall operate shall be set in the Rules of Procedure adopted by the Meetings of the Contracting Parties”.

Unlike the ACCOBAMS, the Barcelona Convention recalls the criterion of equitable geographical distribution in the election of Bureau members.

Under the Rules of procedure for meetings and conferences of the Contracting Parties to the Barcelona Convention and its related Protocols, the number of members of the Bureau is six:

“The Bureau of the meetings or of the conference shall consist of the President, the four Vice-Presidents and the Rapporteur. The President, or in his absence one of the Vice-Presidents designated by him, shall serve as Chairman of the Bureau” (Rule 23).

The functions of the Bureau consist in preparing, in agreement with the Executive Director, the provisional agenda of each meeting and conference (Rule 10), in including in the provisional agenda, in agreement with the Executive Director, any questions suitable for the agenda which may arise between the despatch of the provisional agenda and the opening of the meeting (Rule 13) and in examining the credentials of representatives of Parties (Rule 19). Another function performed by the Bureau has been to provide guidance for the preparation of the UNEP/MAP Medium-Term Strategy 2022-2027⁸.

4.6 OSPAR

Under the Rules of Procedure of the Commission of the Convention for the Protection of the Marine Environment of the North-East Atlantic (Paris, 1992; OSPAR), which has 16 parties, the subsidiary bodies of the OSPAR Commission include the Meeting of Heads of Delegation to the Commission (Rule 20). It shall

“(a) ensure that the material to be presented to meetings of the Commission is properly prepared;

(b) advise on the management of the administrative, budgetary, contractual and personnel issues of the Commission and the Secretariat;

⁸ See the preamble of Decision IG.25/1 (doc. UNEP/MED IG25/27 of 10 December 2021, p. 110).

(c) oversee the development and implementation of the decisions, recommendations and other agreements (including the strategies and work programmes) adopted by the Commission.
It shall have no powers of decision on behalf of the Commission”.

In the OSPAR case, the administrative functions usually performed by agreement bureaus are exercised by a plenary organ, called Meeting of Heads of Delegation. It should be added that another function, that is the formulation of advice on draft decisions and recommendations, is entrusted to a different OSPAR organ, that is the Group of Jurists and Linguists⁹.

4.7 General Remarks on Bureaus in Other Agreements

It appears that in international multilateral agreements there is a great variety of solutions as regards the organ usually called Bureau or Standing Committee. If it is established, the number of its members may depend on the number of parties to the relevant agreement and on the functions attributed to this organ.

While there are several precedents of Bureaus or Standing Committees based on a regional approach, there is no uniform model for such organs in international practice and other approaches are also admissible (this is the case of the present ACCOBAMS Bureau).

5. Legal Aspects of the Italian Proposal

The proposal by Italy to amend Art. 8, para. 2, of the Rules of Procedure of the Meeting of the Parties, is clear. It consists in replacing the words “a maximum of four Vice Chairpersons” by the words “up to a maximum of six Vice Chairpersons”. It is explained in the light of three arguments, which are expressed in the above-mentioned note of 12 October 2023¹⁰.

- a) Based on the assumption that the ACCOBAMS area is divided in four macro-regions (Western Mediterranean and contiguous Atlantic area; Central Mediterranean; Eastern Mediterranean; Black Sea), the Italian proposal remarks that two of such macro-regions are composed of a higher number of Parties. In particular, the present numbers¹¹ are respectively 8¹², 9¹³, 6¹⁴ and 5¹⁵. It would follow, according to the Italian proposal, that Parties “listed in Western and Central Mediterranean regions have less chances to access the Bureau, while the opportunity to be elected should be equally guaranteed”¹⁶.

However, looking at the present ACCOBAMS legal texts, nowhere, in the Agreement or in the Rules of Procedure for the Meeting of the Parties it is provided that the ACCOBAMS Bureau members should be elected on the basis of a macro-regional or regional criterion. Bureau members must be elected among “representatives of the Parties present at the Meeting” (Art. 8, para. 2, of the Rules of Procedure for the Meeting of the Parties). In principle, the representatives of all the ACCOBAMS Parties have the same chances to access the Bureau. Theoretically, all the five members of the Bureau – and all the seven members of the Bureau as well, if the Italian proposal were adopted as it is now and without any additions – could be elected

⁹ See Rule 39 of the Rules of Procedure of the Commission This organ is charged also of the formulation of legal advice on the interpretation and application of the OSPAR Convention (Rule 39bis).

¹⁰ *Supra*, note 2.

¹¹ The numbers will change if those Mediterranean or Black Sea States which have not yet decided to do so or the European Union become Parties to the ACCOBAMS.

¹² Algeria, France, Italy, Monaco, Morocco, Portugal, Spain, Tunisia.

¹³ Albania, Croatia, Greece, Italy, Libya, Malta, Montenegro, Slovenia, Tunisia.

¹⁴ Cyprus, Egypt, Greece, Lebanon, Syria, Türkiye.

¹⁵ Bulgaria, Georgia, Romania, Türkiye, Ukraine.

¹⁶ In fact, four Parties, namely, Greece, Italy, Tunisia and Türkiye are listed in two different macro-regions. It follows that the Italian proposal implicitly implies that these Parties are considered as listed only in one macro-region (however, which one?), as far as the election of the Bureau members is concerned.

from representatives of Parties belonging to the same macro-region. In this hypothetical situation, nobody could claim in legal terms that a breach of the ACCOBAMS rules has taken place.

Of course, a practice could be followed *de facto* according to which the composition of Bureau members should take into account their equitable geographical distribution¹⁷. However, such a practice cannot modify what results (or what does not result) from the content of the written Rules of Procedure for the Meeting of the Parties. Moreover, regions different from the four listed in the explanation of the Italian proposal could be envisaged under such a practice (for example, the region of Southern Mediterranean States)¹⁸.

What is clearly provided under the present Rules of Procedure for the Bureau is that, once elected, all the Bureau members are bound to exercise their functions in a personal capacity and do not represent any single Party, nor – this is implied in Art. 1, para. 3, of the same Rules – any subregional or macro-regional group of Parties. In other words, they do not have any kind of regional mandate.

Yet, the ACCOBAMS Agreement envisages two “subregions”, one including the coastal States of the Black Sea and the other including the coastal States of the Mediterranean Sea and the contiguous Atlantic area (see the relevant definition in Art. I, para. 3, lett. j). However, the said subregions are intended only for the purpose of the Co-ordination Units established by Art. V. They have nothing to do with the Bureau.

In fact, under the present ACCOBAMS system, the Scientific Committee is the organ that is partially composed taking into account an “equitable geographic distribution”. Under Resolution 8.3, adopted in 2022, the Scientific Committee consist in principle of the following members:

“Three experts proposed by CIESM [= Mediterranean Science Commission];

Three experts proposed by IUCN [= International Union for Conservation of Nature];

Up to three representatives for each Region defined in the Appendix, appointed by the Meeting of the Parties;

One representative from the Scientific Committee of the International Whaling Commission (IWC) and one representative from the Scientific Council of the Convention on the Conservation of Migratory Species of Wild Animals (CMS)” (Art. 2, para. 1).

The Appendix to Resolution 8.3, in order to facilitate the nomination of Scientific Committee members, provides for the regional distribution of Parties in four regions, which correspond to the four regions and to the distribution indicated in the present Italian proposal relating to the Bureau. However, it is evident from the wording of Resolution 8.3 that the division in four regions is intended only for the purpose of the Scientific Committee and has nothing to do with other ACCOBAMS organs, such as the Bureau, whose composition is regulated by Art. 8, para. 2, of the Rules of Procedure of the Meeting of the Parties, as revised by the Fifth Meeting of the Parties (2013)¹⁹.

- b) As a second argument, Italy puts forward that “with the current setting of only four vice chairs within the Bureau, geographical representation risks to be unbalanced”.

Here, it does not seem fully clear what kind of geographical representation is envisaged. If the idea is that the two additional members of the Bureau must be elected among the representatives of those two macro-regions which include more Parties, this should be clearly said in the Italian proposal (which is not the case for the time being).

- c) The third Italian argument is that, “considering that the Bureau provides general policy guidance and operational and financial direction to the Agreement Secretariat and the sub-regional co-ordination Units concerning the implementation and promotion of the Agreement, an increase in the number of members will contribute to guarantee a balance between several factors, including: the transparency of work; the institutional memory of the organization; the generational change; the gender representation”.

However, it does not seem that there is a direct connection between the number of Bureau members and the factors indicated by Italy. For example, an unbalanced composition of the Bureau, as far as the gender or the

¹⁷ As a matter of fact, the members of the eighth and seventh Bureaux, including the Chairpersons, were elected from the representatives of, respectively, Bulgaria, Lebanon, Malta, Montenegro, Portugal, and Lebanon, Malta, Morocco, Spain, Türkiye. The present legal advisor cannot point out with precision to which regions Malta and Türkiye should be considered as belonging in the light of the Italian proposal.

¹⁸ As envisaged in Annex 1 to Secretariat’s note BU15/2023/Doc.1.

¹⁹ See *supra*, para. 3.

age of its members are concerned, can occur whatever is their number. A real remedy could be brought only if rules specifically dealing with the question of unbalances were added to the Italian proposal (which is not the case for the time being).

6. Conclusion

The conclusion is that, under a legal perspective, the increase in the number of Bureau members, in order to establish a regional approach also for the composition of the Bureau, as proposed by Italy, is not in conflict with the ACCOBAMS Agreement and can be effected without a formal amendment of it. However, it would entail a substantive change to the applicable Rules of Procedure for the Meeting of the Parties and to the applicable Rules of Procedure for the Bureau.

The present legal advisor cannot enter into the merit of changes in the administrative conception and in the composition of the Bureau. Only the ACCOBAMS Parties are entitled to consider the Italian proposal, discuss it at the Meeting of the Parties and adopt it by *consensus*, if they deem appropriate to do so²⁰. However, the legal advisor feels bound to point out that, to be implemented in a coherent and consistent way, the restructuring under a regional basis of the composition of the Bureau would require the revision and, probably, the amendment of other provisions within the Rules of Procedure for the Meeting of the Parties and the Rules of Procedure for the Bureau. For instance, there would be the need for a new provision listing of States belonging to each region and for a new provision on how to regulate the situation of Parties belonging to two different regions. The deletion or the amendment of the present Art. 1, para. 3, of the Rules of Procedure for the Bureau²¹ should also be discussed, together with the adoption of a new provision specifying what would be the duties of regional representatives in the Bureau.

²⁰ See *supra*, para. 3.

²¹ "All members and alternate members of the Bureau shall exercise their functions in their personal capacity and shall not represent any single ACCOBAMS Party".

PART III - NOTE ON THE IMPLICATIONS OF THE PROPOSED ITALIAN AMENDMENTS REGARDING THE COMPOSITION OF THE ACCOBAMS BUREAU

THE QUESTION OF THE NUMBER OF MEMBERS OF THE ACCOBAMS BUREAU: REMARKS ON REQUIRED AMENDMENTS TO EXISTING RULES

Legal analysis by Tullio Scovazzi²²

1. Terms of Reference

The legal consultant is asked by the Bureau of the Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area (ACCOBAMS) to present a note about the implications on the Rules of Procedure for the Meeting of the Parties and on the Rules of Procedure for the Bureau of the proposal by Italy to increase the number of Vice-Chairpersons of the Bureau from four to six.

This note is based on the legal analysis “The question of the number of Members of the ACCOBAMS Bureau”, distributed at the seventh meeting of the ACCOBAMS Bureau (13-14 February 2025), and does not repeat the considerations developed therein on the functions of the ACCOBAMS Bureau and on the composition of the Bureau or similar subsidiary bodies in other intergovernmental organizations or multilateral agreements.

2. The Composition of the ACCOBAMS Bureau

Art. VI, para. 1, of the ACCOBAMS addresses the composition of the Bureau as follows:

“The Meeting of the Parties shall elect a Bureau consisting of the Chairperson and Vice-Chairpersons of the Meeting of the Parties, and shall adopt rules of procedure for the Bureau, as proposed by the Agreement secretariat. The Chairperson of the Scientific Committee shall be invited to participate as an observer in the meetings of the Bureau. Whenever necessary, the Agreement secretariat shall provide secretariat services”.

The composition of the Bureau as consisting of the Chairperson and the Vice-Chairpersons of the Meeting of the Parties cannot be modified, unless a formal amendment of the Agreement is adopted and enters into force according to the procedure established by Art. X²³. However, the ACCOBAMS does not specify how many Vice-Chairpersons of the Meeting of the Parties (and, consequently, how many members of the Bureau) may be elected. This specification is found in Art. 8, para. 2, of the Rules of Procedure for the Meeting of the Parties, as revised by the Fifth Meeting of the Parties (2013):

“At the commencement of the first sitting of each ordinary Meeting, a Chairperson and a maximum of four Vice Chairpersons shall be elected from among the representatives of the Parties present at the Meeting, based on informal consultations conducted by the Secretariat”.

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²³ “1. This Agreement may be amended at any ordinary or extraordinary session of the Meeting of the Parties. 2. Proposals for amendments to the Agreement may be made by any Party. The text of any proposed amendment and the reasons for it shall be communicated to the Agreement secretariat not less than one hundred and fifty days before the opening of the session. The Agreement secretariat shall transmit copies forthwith to the Parties. Any comments on the text by the Parties shall be communicated to the Agreement secretariat not less than sixty days before the opening of the session. The Secretariat shall communicate to the Parties, as soon as possible after the last day for submission of comments, all comments submitted by that day. 3. Any additional annex or any amendment to the Agreement other than an amendment to its annexes shall be adopted by a two thirds majority of the Parties present and voting and shall enter into force for those Parties which have accepted it on the thirtieth day after the date on which two thirds of the Parties to the Agreement at the date of the adoption of the additional annex or amendment have deposited their instruments of acceptance with the Depositary. For any Party that deposits an instrument of acceptance after the date on which two thirds of the Parties have deposited their instruments of acceptance, the additional annex or amendment shall enter into force on the thirtieth day after the date on which it deposits its instrument of acceptance. (...)”.

The Rules of procedure for the Meeting of the Parties may be amended by a decision of the Meeting itself²⁴.

3. The Amendments Required by the Proposal of Italy

During the eighth Meeting of the Parties (2022), Italy introduced a proposal in order to increase the number of Vice-Chairpersons of the Bureau up to a maximum of six, instead of the current four. It consists in an amendment of Art. 8, para. 2, of the Rules of Procedure for the Meeting of the Parties, replacing the words “a maximum of four Vice Chairpersons” by the words “up to a maximum of six Vice Chairpersons”.

At the Bureau Meeting of 22-23 November 2023, the ACCOBAMS Secretary presented to the Bureau a note received from Italy on 12 October 2023²⁵, which explains the objectives of the proposal. Italy states that the proposal envisages a better representativity of the Parties in the Bureau – “with the current setting of only four vice chairs within the Bureau, geographical representation risks to be unbalanced” –, given the difference in number of Parties in each of the four ACCOBAMS sub-regions.

Increasing in the number of Bureau members, in order to establish a regional approach also for the composition of the Bureau, as proposed by Italy, is not in conflict with the ACCOBAMS and can be effected without a formal amendment of it. However, if the Italian proposal were to be adopted by the Meeting of the Parties, other consequent amendments to the Rules of procedure for the Meeting of the Parties and to the Rules of procedure for the Bureau would be needed. They have not been submitted by Italy so far and are hereunder discussed and indicated only for illustrative purposes.

a) Based on the assumption that the ACCOBAMS area is divided in four macro-regions (Western Mediterranean and contiguous Atlantic area; Central Mediterranean; Eastern Mediterranean; Black Sea), the Italian proposal remarks that two of such macro-regions are composed of a higher number of Parties. In particular, the present numbers are respectively 8²⁶, 9²⁷, 6²⁸ and 5²⁹. It would follow, according to the Italian proposal, that Parties “listed in Western and Central Mediterranean regions have less chances to access the Bureau, while the opportunity to be elected should be equally guaranteed”³⁰.

However, looking at the present legal texts, nowhere in the ACCOBAMS or in the Rules of Procedure for the Meeting of the Parties it is provided that the Bureau members should be elected on the basis of a macro-regional or regional criterion.

The ACCOBAMS Agreement envisages two “subregions”, one including the coastal States of the Black Sea and the other including the coastal States of the Mediterranean Sea and the contiguous Atlantic area (see the relevant definition in Art. I, para. 3, lett. j). However, the said subregions are intended only for the purpose of the Co-ordination Units established by Art. V. They have nothing to do with the Bureau.

The Scientific Committee in the present ACCOBAMS system is the only organ whose composition partially takes into account an “equitable geographic distribution”, as established in the Rules of procedure for the Scientific Committee

²⁴ Art. 28 of the Rules of procedure for the Meeting of the Parties.

²⁵ Annex 2 to BU15/2023/Doc11.

²⁶ Algeria, France, Italy, Monaco, Morocco, Portugal, Spain, Tunisia.

²⁷ Albania, Croatia, Greece, Italy, Libya, Malta, Montenegro, Slovenia, Tunisia.

²⁸ Cyprus, Egypt, Greece, Lebanon, Syria, Türkiye.

²⁹ Bulgaria, Georgia, Romania, Türkiye, Ukraine.

³⁰ In fact, four Parties, namely, Greece, Italy, Tunisia and Türkiye are listed in two different macro-regions. It follows that the Italian proposal implicitly implies that these Parties are considered as listed only in one macro-region (however, which one?), as far as the election of the Bureau members is concerned.

annexed to Resolution 8.3. The Appendix provides for the regional distribution of Parties in four regions, which correspond to the four regions indicated in the present Italian proposal relating to the Bureau. However, it is evident from the wording of Resolution 8.3 that the division in four regions is intended only for the purpose of the Scientific Committee and has nothing to do with other ACCOBAMS organs, such as the Bureau, whose composition is regulated by the already mentioned Art. 8, para. 2, of the Rules of Procedure of the Meeting of the Parties.

Coming back to the Bureau, its members must be elected among “representatives of the Parties present at the Meeting” (Art. 8, para. 2, of the Rules of Procedure for the Meeting of the Parties). In principle, the representatives of all the ACCOBAMS Parties have the same chances of access to the Bureau. Theoretically, all the five members of the Bureau – and all the seven members of the Bureau as well, if the Italian proposal were adopted as it is now and without any additions – could be elected from representatives of Parties belonging to the same region. In this hypothetical situation, nobody could claim in legal terms that a breach of the ACCOBAMS rules has taken place.

Of course, during the informal consultations conducted by the Secretariat and at the time of the election, the practice may be followed according to which the composition of the Bureau should take into account an equitable geographical distribution. However, such a practice cannot modify what clearly results (or does not result) from the content of the written Rules of Procedure for the Meeting of the Parties.

If the Italian proposal were to be adopted, a corresponding amendment to Art. 8, para. 2, of the Rules of Procedure for the Meeting of the Parties could be the following, which is here indicated only for illustrative purposes³¹:

“At the commencement of the first sitting of each ordinary Meeting, a Chairperson and a maximum of **six** Vice Chairpersons shall be elected from among the representatives of the Parties present at the Meeting, based on informal consultations conducted by the Secretariat **and taking into account a balanced geographical representation according to the Annex to the present Rules**”.

b) An annex to the Rules of procedure for the Meeting of the Parties would be needed, specifying what are the four regions and which States Parties are included in each of them.

Taking as a model the Appendix to the Rules of procedure of the Scientific Committee, which in this regard is the source of inspiration for the Italian proposal, the four regions and the Parties belonging to each of them would be the following: Western Mediterranean and contiguous Atlantic area (Algeria, France, Italy, Monaco, Morocco, Portugal, Spain, Tunisia); Central Mediterranean (Albania, Croatia, Greece, Italy, Libya, Malta, Montenegro, Slovenia, Tunisia); Eastern Mediterranean (Cyprus, Egypt, Greece, Lebanon, Syria, Türkiye); Black Sea (Bulgaria, Georgia, Romania, Türkiye, Ukraine). However, the Meeting of the Parties could agree on a different geographical distribution.

Considering that four States Parties (Greece, Italy, Tunisia, Türkiye) belong to two regions, the annex should point out that, before an election of Bureau members, they must choose the region to which they belong for the purpose of that election.

Considering that the number of ACCOBAMS Parties may vary³², the annex should point out that the two additional members of the Bureau may be elected among the representatives of Parties belonging to the two the regional groups that count more States Parties at the time of the election. Another specific provision should address what to do if two regions include the same number of Parties and one of the regions needs to be chosen for the purpose of that election.

³¹ Amendments in bold.

³² The number may vary because of participations by other States entitled to become parties or because of denunciations by existing Parties. It shall also be considered that regional economic integration organizations can become parties to the ACCOBAMS.

Only for illustrative purposes, the wording of the annex could be the following:

Annex
Geographical Representation
Article 1

The geographical scope of the Agreement is divided into four regions, as follows:

- Western Mediterranean and contiguous Atlantic area (Algeria, France, Italy, Monaco, Morocco, Portugal, Spain, Tunisia);
- Central Mediterranean (Albania, Croatia, Greece, Italy, Libya, Malta, Montenegro, Slovenia, Tunisia);
- Eastern Mediterranean (Cyprus, Egypt, Greece, Lebanon, Syria, Türkiye);
- Black Sea (Bulgaria, Georgia, Romania, Türkiye, Ukraine).

Article 2

Before every election of the Vice-Chairpersons of the Meeting of the Parties, the Parties belonging to more than one region shall specify the region to which they belong for the purpose of that election.

Article 3

Parties belonging to the two regions that include more Parties shall be entitled to have two Vice-Chairpersons of the Meeting of the Parties elected. Parties belonging to the other two regions shall be entitled to have one Vice-Chairperson elected.

If two regions include the same number of Parties and only one of them is entitled to have two Vice-Chairpersons elected, the Meeting of the Parties shall decide which region is to be chosen.

c) Italy adds that, “considering that the Bureau provides general policy guidance and operational and financial direction to the Agreement Secretariat and the sub-regional co-ordination Units concerning the implementation and promotion of the Agreement, an increase in the number of members will contribute to guarantee a balance between several factors, including: the transparency of work; the institutional memory of the organization; the generational change; the gender representation”.

However, it does not seem that there is a direct connection between the number of Bureau members and the factors indicated by Italy. For example, an unbalanced composition of the Bureau, as far as the gender or the age of its members are concerned, can occur whatever is their number (four or six). A real remedy to the concern of Italy could be brought only if rules specifically addressing the question of unbalances relating to the transparency of work, the institutional memory of the organization, the generational change, the gender representation were included in new paragraphs of Art. 8 of the Rules of procedure for the Meeting of the Parties.

The present legal advisor is not in a condition to provide examples of such provisions.

d) Art. 1, para. 3, of the Rules of Procedure for the Bureau, annexed to Resolution 6.4, provides as follows:

“All members and alternate members of the Bureau shall exercise their functions in their personal capacity and shall not represent any single ACCOBAMS Party”.

It thus appears that, in the present ACCOBAMS context, all the members of the Bureau are called to exercise their functions in the general interest of the Parties as a whole. Accordingly, Bureau members do not represent any single Party, nor – this is implied in Art. 1, para. 3 – any regional group of Parties.

If the proposal of Italy were adopted, Art. 1, para. 3, should be amended limiting its scope of application to the Chairperson of the Bureau. Only for illustrative purposes, a tentative amendment could be the following:

~~“All members and alternate members of the Bureau shall exercise their functions in their personal capacity and shall not represent any single ACCOBAMS Party”.~~
The Chairperson of the Bureau shall exercise ~~their~~ his / her functions in ~~their~~ his / her personal capacity and shall not represent any single ACCOBAMS Party”.

e) The Bureau, as so far conceived in the ACCOBAMS system, is not based on a regional approach and its members do not have any kind of regional mandate. Introducing a regional approach would imply the inclusion of a new

paragraph in Art. 8 of the Rules of Procedure for the Meeting of the Parties, stating what would be the duties of regional representatives in the Meeting of the Parties and in the Bureau. Only for illustrative purposes, the new paragraph could be the following³³:

“3. Each Vice-Chairperson of the Meeting of the Parties shall participate in the meetings of the Bureau on behalf of his/her entire region and, in performing his/her role, shall accomplish the following duties:

- a) to maintain a fluid communication between the Parties in the region, on the one hand, and the Bureau and the Secretariat, on the other;**
- b) wherever possible, to request opinions from Parties of his/her region on items under consideration by the Bureau;**
- c) to report on activities and communications by Parties in his/her region;**
- d) ...”.**

4. Conclusions

An increase in the number of Bureau members, in order to establish a regional approach, as proposed by Italy, is not in conflict with the ACCOBAMS Agreement and can be effected without a formal amendment of it. However, it would entail consequent changes to the applicable Rules of Procedure for the Meeting of the Parties and to the applicable Rules of Procedure for the Bureau.

The present legal advisor cannot enter into the merit of a proposal submitted by a State Party and relating to changes in the administrative conception of the Bureau and its composition. Only the ACCOBAMS Parties are entitled to consider the substance of the Italian proposal, discuss it at the Meeting of the Parties and adopt it, if they deem appropriate to do so.

However, the legal advisor feels bound to point out that, to be implemented in a coherent and consistent way, the restructuring under a regional basis of the composition of the Bureau would require the discussion and, probably, the amendment, addition or deletion of other provisions in the present Rules of Procedure for the Meeting of the Parties and Rules of Procedure for the Bureau, namely the following:

- the amendment of Art. 8, para. 2, of the Rules of Procedure for the Meeting of the Parties³⁴;
- the addition of a 3-article annex to the Rules of procedure for the Meeting of the Parties³⁵;
- the addition of an undetermined number of paragraphs to Art. 8 of the Rules of procedure for the Meeting of the Parties³⁶;
- the amendment of Art. 1, para. 3, of the Rules of Procedure for the Bureau³⁷;
- the addition of a new paragraph to Art. 8 of the Rules of Procedure for the Meeting of the Parties³⁸.

³³ The subsequent paragraphs of Art. 8 should be renumbered accordingly.

³⁴ *Supra*, para. 3 a.

³⁵ *Supra*, para. 3 b.

³⁶ *Supra*, para. 3 c.

³⁷ *Supra*, para. 3 d.

³⁸ *Supra*, para. 3 c.