

**Ninth Teleconference of the Bureau of the
International Conference on Chemicals Management for its fifth session**
21 July 2021 from 14:00 – 16:30 CET

Legal opinion on IP4 and OEWG4

1. Following the Sixteenth Bureau meeting held in May 2021, legal opinion was sought on whether an additional Open-Ended Working Group, i.e. OEWG4, could be convened in addition to convening a fourth meeting of the inter-sessional process (IP4) or replace IP4. Legal opinion was also sought on whether IP4 could be automatically replaced by an OEWG4, noting that OEWG3 took a decision to convene an additional intersessional process meeting, i.e. IP4. And in the event that this cannot be done automatically, what procedure would be needed to either replace the IP4 with OEWG4?
2. The legal opinion recalled that ICCM Resolution II/6 dealt with the establishment of an OEWG as the subsidiary and preparatory body of the Conference. This Resolution decided that the OEWG may prepare draft decisions or resolutions for possible adoption by the Conference. Resolution II/6 further decided that the OEWG shall meet once, in the year prior to the sessions of the Conference, if possible, back to back with other related meetings. Furthermore, the Bureau of the Conference would serve as the Bureau of the OEWG. From this Resolution it is clear that the ICCM decides on the meetings of the OEWG and ICCM Decision IV/5: entitled, “Activities of the Secretariat and Budget” decided to hold a third meeting of the Open-ended Working Group in advance of the fifth session of the Conference and decided that it may be held in 2018 or early 2019.
3. Bearing that in mind, ICCM Resolution IV/4 decided, “to initiate an intersessional process to prepare recommendations regarding the Strategic Approach and the sound management of chemicals and waste beyond 2020.” (OP2). The Resolution also decided “that the intersessional process should include, in principle, two meetings before the third meeting of the Open-ended Working Group and one meeting between the third meeting of the Open-ended Working Group and the fifth session of the International Conference on Chemicals Management and that it may also work by correspondence and/or by electronic means and directed the Open-ended Working Group to consider the need to call an additional meeting of the intersessional process before the fifth session of the International Conference on Chemicals Management”.
4. Based on the above, the legal opinion concludes that:
 - (a) Any additional meeting of the OEWG, i.e. OEWG4 would have to be authorized by the ICCM.
 - (b) This could be done by the silent procedure mechanism that is in place for taking decisions.
 - (c) ICCM Resolution IV/4 envisages the possibility of a fourth meeting being called of the intersessional process, i.e. IP4.
 - (d) The status of the two bodies is different. The OEWG, as confirmed by ICCM Decision II/6 is the subsidiary body of the Conference, that has historically served as a preparatory body addressing a variety of questions that are of relevance to the Conference. However, by ICCM Decision IV/4, the intersessional process has a specific mandate, which is to prepare recommendations regarding the Strategic Approach and the sound management of chemicals and waste beyond 2020.
 - (e) Consequently, it is correct that the Conference would have to decide upon OEWG4 through the silent procedure.
 - (f) However, the two bodies have separate mandates and responsibilities.

- (g) Thus, it may be advisable to allow the intersessional process to complete its work, including through working by correspondence and/or by electronic means as envisaged by Resolution IV/4, whereupon the matter can be taken up by an OEWG4 that has a general mandate as the subsidiary and preparatory body of the Conference.
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