



Advice to Council No: 22-01

Status of the Commission for Environmental Cooperation in Mexico

The Joint Public Advisory Committee (JPAC) of the Commission for Environmental Cooperation (CEC) of North America:

IN ACCORDANCE with Article 6(4) of the Agreement on Environmental Cooperation (ECA), which states that JPAC “may provide advice to the Council on matters within the scope of this agreement, and may perform such other functions as the Council may direct”;

HAVING received the memorandum, *Update: Bilateral Consultations on Privileges and Immunities of the CEC*, from CEC Executive Director Richard Morgan, that was circulated in June 2021 to the Alternative Representatives and JPAC to summarize the result of the Secretariat’s bilateral consultations with foreign affairs officials from the Parties to understand and clarify the scope of privileges and immunities of the CEC following the entry into force of the ECA on July 1, 2020;

TAKING INTO ACCOUNT that the CEC entered into a new Headquarters Agreement with the Government of Canada that went into force in December 2020. The new Agreement upholds the status of the CEC as an international organization in Canada and maintains the same privileges and immunities for officials, directors, experts, and the Executive Director, in accordance with prior practice;

TAKING INTO ACCOUNT that the Government of the United States of America confirmed the CEC’s retention of its status as an international organization in the US, per Executive Order 12904, after the entry into force of the ECA, and that the privileges and immunities enjoyed by the CEC and CEC officials prior to the ECA and USMCA/CUSMA remain unaltered;

TAKING INTO ACCOUNT that the CEC held consultations with the United Mexican States, beginning in November 2020, wherein Mexico recognized the CEC as a legal person but did not extend official recognition as an international organization. Continued discussions with Mexico have not resulted in any further progress. Thus, unlike Canada and the US, Mexico does not extend privileges and immunities to the CEC, Secretariat Officials, Council members, or experts;

RECOGNIZING that the CEC will need to consider its legal exposure in Mexico when conducting JPAC activities and implementing the cooperative agenda under the Strategic Plan and the SEM process;

RECOGNIZING that the CEC, its officials, JPAC members, and experts require legal protection to carry out the CEC’s mission, when implementing programs in Mexico such as the

Pollutant Release and Transfer Register, SEM, NAPECA, and EJ4Climate; or when traveling to Mexico for Council sessions, JPAC meetings, or engaging in public communications of any form;

RECOGNIZING that CEC officials who travel to Mexico to prepare a factual record under USMCA/CUSMA Chapter 24 lack legal protections that would allow them to carry out their work for the CEC without the risk of being impeded, detained, required to appear in court, or ordered to turn over confidential information protected by the ECA and USMCA/CUSMA. These actions are not consistent with the ECA and cut to the core of the SEM process;

RECOGNIZING that the ability of the CEC and its officials to undertake key functions under the ECA and the USMCA/CUSMA is currently compromised, and the mission of the CEC is in jeopardy, as Secretariat staff, JPAC members, experts, or even Council representatives could be subject to legal actions and consequences in Mexico;

RECOGNIZING that ongoing litigation in Mexico involving an active submission illustrates the legal ramifications of the absence of privileges and immunities and the potential for legal exposure for the CEC and its officials;

SUBMITS the following advice and recommendations for Council's consideration:

1. The CEC should enter into a Memorandum of Understanding with Mexico providing courtesies and legal protections for CEC officials, JPAC members, and experts working in Mexico.
 - a. Such a memorandum could include:
 - i. Provisions guaranteeing security for officials, JPAC members, and experts to safely conduct their work on behalf of the CEC;
 - ii. Provisions facilitating information-sharing and access to information;
 - iii. Provisions facilitating the work of CEC officials, JPAC members, and experts while in the territory of Mexico;
 - iv. Specific measures to avoid any form of political or judicial interference;
 - v. Any other courtesies that Mexico has recognized for other international organizations operating in their country.
2. The Parties should engage trilaterally to ensure there are sufficient protections for the CEC across all three countries to implement the cooperative agenda and obligations under the ECA and Chapter 24 of the USMCA/CUSMA/T-MEC. These discussions should involve various levels of government, including foreign affairs agencies. This



process should conclude with a Council Resolution that expresses support for Mexico's efforts toward recognition of the CEC's status as an international organization and the extension of courtesies and legal protections for CEC officials and experts.

3. The CEC's status in Mexico should remain on the agenda for the meetings of the Alternative Representatives until the matter has been settled.

JPAC is confident that the recommendations contained herein are relevant for the CEC, JPAC members and experts to continue supporting the CEC Council's strategic priorities and is unanimous in supporting this Advice to Council.

We urge your immediate attention to this matter.

Approved by the JPAC members

16 March 2022