

## **Decision XXIV/8: Terms of reference, code of conduct and disclosure and conflict of interest guidelines for the Technology and Economic Assessment Panel and its technical options committees and temporary subsidiary bodies**

*Taking note* of paragraph 17 of decision XXIII/10, in which the parties requested the Technology and Economic Assessment Panel to revise its draft guidelines on recusal, taking into account similar guidelines in other multilateral forums, and provide them to the Open-ended Working Group for consideration at its thirty-second meeting,

*Taking note also* of the terms of reference of the Panel as set out in annex V of the report of the Eighth Meeting of the Parties, as amended by decision XVIII/19,

*Taking note further* of decision XXIII/10, in which the parties requested the Technology and Economic Assessment Panel to propose an update to its terms of reference,

*Recalling* decision VII/34 on the organization and functioning of the Panel and specifically on efforts to increase the participation of experts from parties operating under paragraph 1 of Article 5 in order to improve geographical expertise and balance,

*Noting* that the Intergovernmental Panel on Climate Change has established a conflict of interest committee and the Stockholm Convention on Persistent Organic Pollutants Review Committee has adopted a procedure for dealing with conflicts of interest,

*Bearing in mind* that the role of the Panel, its technical options committees and its temporary subsidiary bodies makes it essential to avoid even the appearance of any conflict between individual members' interests and their duties as Panel members,

*Bearing in mind also* that it is in the interest of the Panel, its technical options committees and its temporary subsidiary bodies to maintain public confidence in its integrity by adhering closely to its terms of reference,

1. To request the Technology and Economic Assessment Panel to make recommendations on the future configuration of its technical options committees to the Open-Ended Working Group at its thirty-third meeting, bearing in mind anticipated workloads;
2. To approve the terms of reference and the conflict of interest and disclosure policy for the Technology and Economic Assessment Panel, its technical options committees and any temporary subsidiary bodies set up by those bodies set out in the annex to the present decision in place of the terms of reference set out in annex V to the report of the Eighth Meeting of the Parties, as amended;
3. To request that the Technology and Economic Assessment Panel and its technical options committees make available to the parties their standard operating procedures;

### **Annex**

#### **Terms of reference of the Technology and Economic Assessment Panel and its technical options committees and temporary subsidiary bodies**

##### **1. Scope of work**

The tasks undertaken by the Technology and Economic Assessment Panel (TEAP) are those specified in Article 6 of the Montreal Protocol in addition to those requested from time to time at Meetings of the Parties. TEAP analyses and presents technical information and recommendations when specifically requested. It does not evaluate policy issues and does not recommend policy. TEAP presents technical and economic information relevant to policy. Furthermore, TEAP does not judge the merit or success of national plans, strategies, or regulations.

To carry out its work programme, technical options committees (TOCs) are established and agreed to by a decision of the parties. TEAP may also establish temporary subsidiary bodies (TSBs),

as needed. These bodies *generally* will not last for more than one year and are aimed at responding to specific requests made by the parties.

## **2.1 Size and balance**

### **2.1.0**

The overall goal is to achieve a representation of about 50 per cent for Article 5(1) Parties in the TEAP and TOCs and appropriate representation of expertise in the different alternatives.

### **2.1.1 TEAP**

The membership size of the TEAP should be about 18-22 members, including 2 or 3 co-chairs to allow it to function effectively. It should include the co-chairs of the TOCs; there should be two co-chairs per TOC and 2-4 Senior Experts for specific expertise not covered by the TEAP co-chairs or TOC co-chairs, taking into account gender and geographical balance.

At least one and preferably all of the TEAP co-chairs should not simultaneously serve as a TOC co-chair.

### **2.1.2 TOCs**

Each TOC should have two co-chairs. The positions of TOC co-chairs must be filled to promote a geographical, gender and expertise balance. TEAP, through its TOC co-chairs, shall compose its TOCs to reflect a balance of appropriate and anticipated expertise so that their reports and information are comprehensive, objective and policy-neutral.

### **2.1.3 TSBs**

TEAP, in consultation with the TSB co-chairs, shall compose its TSBs to reflect a balance of appropriate expertise so that their reports and information are comprehensive, objective and policy-neutral. TEAP, acting through the TSB co-chairs, shall provide a description in reports by TSBs on how their composition was determined. TSB members, including co-chairs, who are not already members of the TEAP, do not become members of the TEAP by virtue of their service on the TSB.

## **2.2 Nominations**

### **2.2.1 TEAP**

Nominations of members to the TEAP, including co-chairs of the TEAP and TOCs, must be made by individual Parties to the Secretariat through their respective national focal points. Such nominations will be forwarded to the Meeting of the Parties for consideration. The TEAP co-chairs shall ensure that any potential nominee identified by TEAP for appointment to the Panel, including co-chairs of TEAP and the TOCs, is agreed to by the national focal points of the relevant party. A member of TEAP, the TOCs or the TSBs shall not be a current representative of a party to the Montreal Protocol.

### **2.2.2. TOCs and TSBs**

All nominations to TOCs and TSBs shall be made in full consultation with the national focal point of the relevant party.

Nominations of members to a TOC (other than TOC co-chairs) may be made by individual parties or TEAP and TOC co-chairs may suggest to individual parties experts to consider nominating. Nominations to a TSB (including TSB co-chairs) can be made by the TEAP Co-chairs

## **2.3 Appointment of members of TEAP**

In keeping with the intent of the parties for a periodic review of the composition of the assessment panel, the Meeting of the Parties shall appoint the members of TEAP for a period of no more than four years. The Meeting of the Parties may re-appoint Members of the Panel upon nomination by the relevant party for additional periods of up to four years each. In appointing or

re-appointing members of TEAP, the parties should ensure continuity, balance as well as a reasonable turnover.

## **2.4 Co-chairs**

In nominating and appointing co-chairs of the TEAP/TOCs/TSBs, parties should consider the following factors:

- (a) Co-chairs should have experience or skills in managing, coordinating, and building consensus in technical bodies, in addition to possessing technical expertise in relevant areas;
- (b) The co-chairs of a TOC should not normally act as co-chairs of another TOC; and
- (c) The co-chairs of TEAP should not be co-chairs of a TOC;
- (d) The TEAP and TOC co-chairs may suggest to individual parties experts to consider nominating.

## **2.5 Appointment of members of TOCs**

Each TOC should have about 20 members. The TOC members are appointed by the TOC co-chairs, in consultation with TEAP, for a period of no more than four years. TOC members may be re-appointed following the procedure for nominations for additional periods of up to four years each.

## **2.6 Subsidiary bodies**

Temporary Subsidiary Technical Bodies (TSBs) can be appointed by TEAP to report on specific issues of limited duration. TEAP may appoint and dissolve, subject to review by the parties, such subsidiary bodies of technical experts when they are no longer necessary. For issues that cannot be handled by the existing TOCs and are of substantial and continuing nature, TEAP should request the establishment by the parties of a new TOC. A decision of the Meeting of the Parties is required to confirm any TSB that exists for a period of more than one year.

## **2.7 Termination of appointment**

Members of TEAP, a TOC or a TSB may relinquish their position at any time by notifying in writing as appropriate the co-chairs of the TEAP, TOC or TSB and the relevant party.

TEAP can dismiss a member of TEAP, the TOCs and the TSBs, including co-chairs of those bodies, by a two-thirds majority vote of TEAP. A dismissed member has the right to appeal to the next Meeting of the Parties through the Secretariat. The TEAP co-chairs will inform the relevant party if TEAP is dismissing members.

## **2.8 Replacement**

If a member of TEAP, including TOC co-chairs, relinquishes or is unable to function including if he or she was dismissed by TEAP, the Panel, after consultation with the nominating party, can temporarily appoint a replacement from among its bodies for the time up to the next Meeting of the Parties, if necessary to complete its work. For the appointment of a replacement TEAP member, the procedure set out in paragraph 2.2 should be followed.

## **2.9 Guidelines for nominations and matrix of expertise**

The TEAP/TOCs will draw up guidelines for nominating experts by the parties. The TEAP/TOCs will publicize a matrix of expertise available and the expertise needed in the TEAP/TOCs so as to facilitate submission of appropriate nominations by the parties. The matrix must include the need for geographic and expertise balance and provide consistent information on expertise that is available and required. The matrix would include the name and affiliation and the specific expertise required including on different alternatives. The TEAP/TOCs, acting through their respective co-chairs, shall ensure that the matrix is updated at least once a year and shall publish the matrix on the Secretariat website and in the Panel's annual progress reports. The TEAP/TOCs shall also ensure that the information in the matrix is clear, sufficient and consistent as far as is appropriate between the TEAP and TOCs and balanced to allow a full understanding of needed expertise.

### **3. Functioning of TEAP/TOCs/TSBs**

#### **3.1 Language**

TEAP/TOCs/TSBs meetings will be held and reports and other documents will be produced only in English.

#### **3.2 Meetings**

##### **3.2.1 Scheduling**

The place and time of the TEAP/TOCs/TSBs meetings will be fixed by the co-chairs.

##### **3.2.2 Secretariat**

The Ozone Secretariat should attend the meetings of the TEAP whenever possible and appropriate to provide ongoing institutional advice on administrative issues when necessary.

##### **3.2.3 Operating procedures**

Co-chairs of the TOCs should organize meetings in accordance with operating procedures developed by the TOCs in consultation with the Secretariat to ensure full participation of all members, sound and appropriate decision-making and record keeping. The procedures should be updated periodically and made available to the parties.

#### **3.3 Rules of procedure**

The rules of procedure of the Montreal Protocol for committees and working groups will be followed in conducting the meetings of the TEAP/TOCs/TSBs, unless otherwise stated in these terms of reference for TEAP/TOCs/TSBs or other decisions approved by a Meeting of the Parties.

#### **3.4 Observers**

No observers will be permitted at TEAP, TOC or TSB meetings. However, anyone can present information to the TEAP/TOCs/TSBs with prior notice and can be heard personally if the TEAP/TOCs/TSBs consider it necessary.

#### **3.5 Functioning by members**

The TEAP/TOCs/TSBs members function on a personal basis as experts, irrespective of the source of their nominations and accept no instruction from, nor function as representatives of Governments, industries, non-governmental organizations (NGOs) or other organizations.

### **4. Report of TEAP/TOCs/TSBs**

#### **4.1 Procedures**

The reports of the TEAP/TOCs/TSBs will be developed through a consensus process. The reports must reflect any minority views appropriately.

#### **4.2 Access**

Access to materials and drafts considered by the TEAP/TOCs/TSBs will be available only to TEAP/TOCs members or others designated by TEAP/TOCs/TSBs.

#### **4.3 Review by TEAP**

The final reports of TOCs and TSBs will be reviewed by the TEAP and will be forwarded, without modification (other than editorial or factual corrections which have been agreed with the co-chairs of the relevant TOC or TSB) by TEAP to the Meeting of the Parties, together with any comments TEAP may wish to provide. Any factual errors in the reports may be rectified through a corrigendum following publication, upon receipt by TEAP or the TOC of supporting documentation.

#### **4.4 Comment by public**

Any member of the public can comment to the co-chairs of the TOCs and TSBs with regard to their reports and they must respond as early as possible. If there is no response, these comments can be sent to the TEAP co-chairs for consideration by TEAP.

### **5. Code of conduct for Members of the Technology and Economic Assessment Panel and its bodies**

#### **Code of Conduct**

Members of TEAP, the TOCs and the TSBs have been asked by the parties to undertake important responsibilities. As such, a high standard of conduct defined in accordance with the principles of transparency, predictability, accountability, trustworthiness, integrity, responsibility and disclosure is expected of members in discharging their duties. In order to assist members, the following guidelines have been developed as a Code of Conduct that must be followed by the members of TEAP, the TOCs and the TSBs.

1. This Code of Conduct is intended to protect Members of TEAP, the TOCs and the TSBs from conflicts of interest in their participation. Compliance with the measures detailed in these guidelines is a condition for serving as a Member of TEAP, the TOCs or the TSBs.

2. The Code is to enhance public confidence in the integrity of the process while encouraging experienced and competent persons to accept TEAP, TOC and/or TSB membership by:

(a) Establishing clear guidelines respect to conflict of interest and disclosure while and after serving as a member; and

(b) Minimizing the possibility of conflicts arising between the private interest and public duties of members and by providing for the resolution of such conflicts, in the public interest, should they arise.

3. In carrying out their duties, members shall:

(a) Perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of TEAP, the TOCs and the TSBs are conserved and enhanced;

(b) Act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law of any country;

(c) Act in good faith for the best interest of the process;

(d) Exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;

(e) Not give preferential treatment to anyone or any interest in any official manner related to TEAP, the TOCs or the TSBs;

(f) Not solicit or accept significant gifts, hospitality or other benefits from persons, groups or organizations having or likely to have dealings with TEAP, the TOCs or the TSBs;

(g) Not accept transfers of economic benefit, other than incidental gifts, customary hospitality or other benefits of nominal value, unless the transfer is pursuant to an enforceable contract or property right of the member;

(h) Not represent or assist any outside interest in dealings before TEAP, the TOCs or the TSBs;

(i) Not knowingly take advantage of, or benefit from, information that is obtained in the course of their duties and responsibilities as a member of TEAP, the TOCs and the TSBs, and that is not generally available to the public; and

(j) Not act, after their term of office as members of TEAP, the TOCs or the TSBs in such a manner as to take improper advantage of their previous office.

4. To avoid the possibility or appearance that members of TEAP, the TOCs or the TSBs might receive preferential treatment, members shall not seek preferential treatment for themselves or third parties or act as paid intermediaries for third parties in dealings with TEAP, the TOCs or the TSBs.

## **6. Conflict of Interest and Disclosure Guidelines for the Technology and Economic Assessment Panel, Its Technical Options Committees and Temporary Subsidiary Bodies**

### **Definitions**

1. For the purposes of these Guidelines:

(a) “Conflict of interest” means any current interest of a member, or of that member’s personal partner or dependant which, in the opinion of a reasonable person does or appears to:

- (i) Significantly impair that individual’s objectivity in carrying out their duties and responsibilities for TEAP, the TOC or the TSB; or
- (ii) Create an unfair advantage for any person or organization;

(b) “Member” means member including co-chairs of TEAP, the TOCs and/or the TSBs;

(c) “Recusal” means that a member does not participate in particular elements of TEAP, TOC or TSB work because of a conflict of interest; and

(d) “Conflict resolution advisory body” means the body appointed under paragraph 22.

### **Purposes**

2. The overall purpose of these Guidelines is to protect the legitimacy, integrity, trust, and credibility of the TEAP, TOCS and TSBs and of those directly involved in the preparation of reports and activities.

3. The role of the TEAP, TOCs and TSBs demands that they pay special attention to issues of independence and bias in order to maintain the integrity of, and public confidence in, their products and processes. It is essential that the work of TEAP and its TOCs and TSBs is not compromised by any conflict of interest.

4. Written agreement to comply with these Guidelines is a condition for service as a Member.

5. These Guidelines are to enhance public confidence in the process, while encouraging experienced and competent persons to serve on the TEAP, TOC and/or TSB, by:

(a) Establishing clear guidance with respect to disclosure and conflict of interest while serving as a Member;

(b) Minimizing the possibility of conflicts of interest arising with respect to Members, and by providing for the resolution of such conflicts, in the public interest, should they arise; and

(c) Finding the balance between the needs:

- (i) To identify the appropriate disclosure requirements, and
- (ii) To ensure the integrity of the TEAP process.

6. These Guidelines are principle-based and do not provide an exhaustive list of criteria for the identification of conflicts.

7. TEAP, the TOCS, the TSBs and their members should not be in a situation that could lead a reasonable person to question, and perhaps discount or dismiss, their work because of the existence of a conflict of interest.

## **Disclosure**

8. Members are to disclose annually any potential conflicts of interest. They must also disclose the source of any funding for their participation in the work of the TEAP, TOC and/or TSB. An illustrative list of other interests that should be disclosed is provided in Annex A to these Guidelines.

9. Members are to disclose any material change to previously submitted information within 30 days of any such change.

10. Notwithstanding paragraphs 8 and 9, a member may decline to disclose information related to activities, interests and funding where its disclosure would adversely and materially affect:

- (a) Defence, national security or imminent public safety;
- (b) The course of justice in prospective or current court cases;
- (c) The ability to assign future intellectual property rights; or
- (d) The confidentiality of commercial, government, or industrial information.

11. Members who decline to disclose information under paragraph 10 must declare that they are doing so in their disclosure of interest under paragraphs 8 or 9 and must be completely excluded from discussions and decisions on related topics.

## **Conflict of interest**

12. A member's strong opinion (sometimes referred to as bias), or particular perspective, regarding a particular issue or set of issues does not create a conflict of interest. It is expected that the TEAP, TOCs and TSBs will include members with different perspectives and affiliations, which should be balanced so far as possible.

13. These Guidelines apply only to current conflicts of interest. They do not apply to past interests that have expired, no longer exist and cannot reasonably affect current assessment. Nor do they apply to possible interests that may arise in the future but that do not currently exist, as such interests are inherently speculative and uncertain. For example, a pending application for a particular job is a current interest, but the mere possibility that one might apply for such a job in the future is not a conflict of interest.

## **Procedures**

14. All of the bodies involved in advising on and deciding conflict of interest issues under these Guidelines should consult the relevant member where the body has concerns about a potential conflict of interest and/or where it requires clarification of any matters arising out of a member's disclosure. Such bodies should ensure that the relevant individuals and, where appropriate, the nominating Party, have an opportunity to discuss any concerns about a potential conflict of interest.

15. In the event that an issue regarding a potential conflict of interest arises, the relevant member and co-chairs should attempt to resolve the issue through consultations, including consultations with the advisory body. If the consultations reach an impasse, TEAP could request the Executive Secretary to select an outside mediator to assist in resolving the matter. The mediator should not be a member and should not otherwise have any current affiliation with the relevant individuals, bodies or issues.

16. At any point, the conflict resolution advisory body may be consulted by members or potential members regarding issues related to:

- (a) Member disclosures;
- (b) Potential conflicts of interest or other ethics issues; or
- (c) Potential recusal of members.

17. The conflict resolution advisory body must promptly inform a member if it has been asked to advise on an issue regarding the member. Any information provided to and any advice provided by the conflict resolution advisory body will be considered confidential and will not be used for any purpose other than consideration of conflict of interest issues under these Guidelines without the express consent of the individual providing the information or requesting the advice, as appropriate.

18. If an issue under these Guidelines cannot be resolved through the procedures in paragraphs 14 through 17:

(a) A TEAP member, including TEAP and TOC co-chairs, may be recused from a defined area of work only by a three-fourths majority of TEAP (excluding the individual whose recusal is at issue).

(b) A TOC or TSB member, excluding TEAP and TOC co-chairs, may be recused from a defined area of work by the co-chairs of the relevant TOC or, upon appeal, by a three-fourths majority of TEAP.

19. In the event of the procedure under the previous paragraph taking place, the Member whose recusal is at issue may not participate. In the event that the matter is brought to the TEAP consistent with paragraph 18, the Member whose recusal is under discussion, should be excluded from those discussions.

## **Recusal**

20. When a conflict of interest is determined to exist with respect to a particular Member, the Member should, depending on what is appropriate in the circumstances, be:

- (a) Excluded from decision-making and discussions related to a defined area of work;
- (b) Excluded from decision-making but may participate in discussions related to a defined area of work; or
- (c) Excluded from participation in the matter in any other manner deemed appropriate.

21. A Member who is recused completely or partially from an area of work may nevertheless answer questions with respect to that work at the request of the TEAP, TOC or TSB.

## **Conflict resolution advisory body**

22. The conflict resolution advisory body is not envisioned as a body that will meet on any regular basis but will come together, physically or virtually, as needed to provide advice to members or potential members and assist with resolving issues. It shall consist of Co-Chairs of the Open-Ended Working Group and the President of the Bureau of the Meeting of the Parties, with the Ozone Secretariat providing logistical, technical legal and administrative support and advice to the body. No additional travel support or other financial support will be provided to members serving on the body.

## **Annex to the terms of reference**

The following is an illustrative list of the types of interests that should be disclosed:

(a) A current proprietary interest of a member or his/her personal partner or dependent in a substance, technology or process (e.g., ownership of a patent) to be considered by the Technology and Economic Assessment Panel or any of its technical options committees or temporary subsidiary bodies;

(b) A current financial interest of a member or his/her personal partner or dependent, e.g., shares or bonds in an entity with an interest in the subject matter of the meeting or work (but not shareholdings through general mutual funds or similar arrangements where the expert has no control over the selection of shares);

(c) A current employment, consultancy, directorship or other position held by a Member or his/her personal partner or dependent, whether or not paid, in any entity which has an interest in the subject matter of the Technology and Economic Assessment Panel. This element of disclosure also includes paid consultancy efforts performed on behalf of an implementing agency to assist developing countries to adopt alternatives;

(d) The provision of advice on significant issues to a government with respect to its implementation of the Montreal Protocol or engaging in the development of significant policy positions of a government for a Montreal Protocol meeting;

(e) Performance of any paid research activities or receipt of any fellowships or grants for work related to a proposed use of an ozone-depleting substance or an alternative to a proposed use of an ozone depleting substance.