

**Open-ended Working Group of the Parties to
the Montreal Protocol on Substances that
Deplete the Ozone Layer**

Thirty-second meeting
Bangkok, 23–27 July 2012
Agenda item 12

Other matters

**Draft decision on the 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**

Submission by the Contact Group on TEAP issues

[The Twenty-Fourth Meeting of the Parties decides:

Noting 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,

Noting also 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,

[Include a note on Dec XXIII/10 request to TEAP to update the TOR?]

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

Bearing in mind that the role of the Panel [and its SB] 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 [and its SB] 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 and composition of its technical options committees [while respecting geographic, A5/non-A5 and gender balance as well as technical capabilities in particular with respect to the [different types of alternatives]] 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, as contained in the annex to [the present decision][the report of the Twenty-Fourth Meeting of the Parties], in place of the terms of reference set out in annex V to the report of the Eighth Meeting of the Parties, as amended.

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 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. The TEAP analyses and presents technical information [and recommendations when specifically requested]. It does not evaluate policy issues and does not recommend policy. The TEAP presents technical and economic information relevant to policy. Furthermore, the TEAP does not judge the merit or success of national plans, strategies, or regulations. {Tasks of TOCs and TF to be included.}

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 [12][18-]22 to allow it to function effectively. It should consist of the [2][3][4] Co-chairs of the TEAP, the Co-chairs of all the TOCs and [2][4-]6 Senior Experts for specific expertise[, gender balance,] and geographical balance not covered by the TEAP Co-chairs or TOC Co-chairs.

2.1.2 TOCs

Each TOC should have two [or, if appropriate, three] Co-chairs. The positions of TOC Co-chairs ~~as well as of the Senior Experts~~ must be filled to promote a geographical[, gender] and expertise balance. [The overall goal is to achieve a representation of about 50 per cent for Article 5(1) Parties in the TEAP and TOCs.] The TEAP, through its TOC Co-chairs, shall compose its TOCs, to reflect a balance of appropriate [and anticipated] expertise [and viewpoints] so that their reports and information are comprehensive, objective, and policy neutral.

2.1.3 TSBs

The TEAP, in consultation with TSB Co-chairs, shall compose its TSBs to reflect a balance of appropriate expertise [and viewpoints] so that their reports and information are comprehensive, objective, and policy neutral. The TEAP, acting through 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][may] 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 the TEAP and TOCs, is agreed to by the national focal points of the relevant party. [A member of the TEAP, TOCs, or TSBs shall not be current a representative of a Party to the Montreal Protocol.]

2.2.2. TOCs and TSBs

The TEAP, working through the relevant TOC Co-chairs, shall ensure that all nominations [appointments] to its TOCs and its TSBs have been made in full consultation with the national focal points of the relevant party.

Nominations of members to a TOC (other than TOC co-chairs) or to a TSB ([including] [other than] TSB co-chairs) may be made by [the TEAP, TOC Co-Chairs or] individual Parties to the Secretariat [in full consultation with][through] their respective national focal points. Such nominations will be forwarded to the TEAP for consideration. ~~[The TEAP, working through the relevant TOC Co-chairs,~~

~~shall ensure that all nominations to its TOCs and its TSBs have been made in full consultation with the national focal points of the relevant party.]~~

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 the TEAP for a period of no more than four years ~~[to be determined by the Parties]~~. The Meeting of the Parties may re-appoint Members of the Panel upon nomination by [its][the relevant][a] party for additional periods of up to four years each. In appointing or re-appointing members of the 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.]

2.5 Appointment of Members of TOCs

Each TOC should have about 20-[25] members. The TOC members are appointed by the TOC Co-chairs, in consultation with the TEAP, for a period of no more than four years. TOC members may be re-appointed [following the procedure for nominations][in consultation with TEAP and the national focal points] for additional periods of up to four years each.

2.6 Termination of Appointment

TEAP can dismiss a member of the TEAP, TOCs, or TSBs, including Co-chairs of those bodies, by a two-thirds majority vote of the TEAP. A dismissed member has the right to appeal to the next Meeting of the Parties through the Secretariat. [Parties are informed when members leave....]

2.7 Replacement

If a member of the TEAP, including TOC Co-chairs, relinquishes or is unable to function, the TEAP after consultation with the nominating Party can temporarily appoint a replacement from amongst 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.

2.8 Subsidiary Bodies {PERHAPS MOVE TO BEFORE 2.6?}

Temporary Subsidiary Technical Bodies (TSBs) can be appointed by the TEAP to report on specific issues of limited duration. The TEAP/[TOCs] 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.

2.9 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 gap in the TEAP/TOCs so as to facilitate submission of appropriate nominations by the Parties. The matrix should [must] include the need for geographic [gender] 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 [knowledge] [in particular] [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. {The requirements of the matrix could be reflected as bullets.}.

3. Functioning of TEAP/TOCs/TSBs

3.1 Language

The 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 [aligned] standard operating procedures following best practices developed by the [Secretariat] to ensure full participation of all relevant members to the greatest extent possible, appropriate record-keeping, and proper decision-making. The standard operating procedures should be updated periodically and made available to the Parties. {NEED A DECISION TO REQUEST THE SECRETARIAT TO DEVELOP THE SOP?}]

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 the 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, NGOs or others.

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 {FURTHER VIEWS ON HOW – ALSO SEE VOL 3 OF TEAP PROGRESS REPORT.}.

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 the TEAP to the [Meeting of the] Parties, together with any comments the 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 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

[Good governance and best practices of TEAP, TOCs and TSBs are defined in accordance with the principles of transparency, predictability, accountability, responsibility and disclosure. The TEAP, TOCs and TSBs aim at a zero-tolerance of corruption.]

Members of the TEAP, TOCs and the TSBs have been asked by the Parties to undertake important responsibilities. As such, a high standard of conduct 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 the TEAP, TOCs, and TSBs.

1. This Code of Conduct is intended to protect Members of the TEAP, TOCs and TSBs from conflicts of interest [including corruption] in their participation. Compliance

with the measures detailed in these guidelines is a condition for serving as a Member of the 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:
 - establishing clear guidelines respect to conflict of interest and disclosure while and after serving as a Member, and
 - by 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:
 - 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 the TEAP, TOCs and TSBs are conserved and enhanced;
 - 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;
 - act in good faith for the best interest of the process;
 - exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances;
 - not give preferential treatment to anyone or any interest in any official manner related to the TEAP, TOCs or TSBs;
 - not solicit or accept significant gifts, hospitality, or other benefits from persons, groups or organizations having or likely to have dealings with the TEAP, TOCs or TSBs;
 - 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;
 - not represent or assist any outside interest in dealings before the TEAP, TOCs or TSBs;
 - not knowingly take advantage of, or benefit from, information that is obtained in the course of their duties and responsibilities as a Member of the TEAP, TOCs and TSBs, and that is not generally available to the public; and
 - not act, after their term of office as a Member of the TEAP, TOCs or TSBs in such a manner as to take improper advantage of their previous office.
4. To avoid the possibility or appearance that Members of the TEAP, TOCs or 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 the TEAP, TOCs or 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 [professional, political,] financial or other interest of a Member, or of that Member’s personal partner or dependent, 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 the TEAP, TOC, or TSB; or
 - (ii) Create an unfair advantage for any person or organization;
 - (b) “Member” means member of the TEAP, TOCs and/or TSBs;

(c) “recusal” means that a Member does not participate in particular [aspects][elements] of TEAP, TOC or TSB work because of a conflict of interest; and

[(d) [“ethics advisory body”][“conflict resolution body”] means the body appointed under paragraph 22].

{Include something on illegal activities [including. corruption] in an appropriate place somewhere -- using such examples as rules set out in other international bodies like the World Bank and how the IPCC addresses this issue?}

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 [and after] 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) Balancing the needs—
 - (i) To identify the appropriate reporting 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. The TEAP, TOCS, 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) [International relations,] 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;
 - (d) The confidentiality of commercial, government, or industrial information; or
 - (e) [Personal confidentiality].

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 [dismissed] 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. The Member, or the Member's personal partner or dependent, must have an interest, ordinarily financial, that could be directly affected by the work of the relevant body. It is expected that issues of potential bias will be addressed in the TEAP, TOCs and TSBs by including Members with different perspectives and affiliations which should be balanced so far as possible. [Replace the paragraph with: "A member's strong opinion (sometimes referred to as bias), or particular perspective, regarding a particular issue or set of issues does not necessarily create a conflict of interest but it may do so. 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,] [relevant focal point]] 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. If the consultations reach an impasse, an outside mediator should be selected by the Executive Secretary 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 [ethics advisory][conflict resolution] body may be consulted by Members, individuals who may become Members, the TEAP, and the TOCs regarding issues related to:
 - (a) Member disclosures;
 - (b) Potential conflicts of interest or other ethics issues; or
 - (c) Potential recusal of Members.
17. The [ethics advisory][conflict resolution] 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 [ethics advisory][conflict resolution] 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 TEAP member, including TEAP and TOC Co-chairs, may be recused from a defined area of work only by a three-fourths majority of the TEAP (excluding the individual whose recusal is at issue).

- A TOC or TSB member, excluding TEAP and TOC Co-chairs, may be recused from a defined area of work by a majority of the Co-chairs of the relevant TOC or, in the event of a tie vote, by a three-fourths majority of the TEAP.

19. In the event of a vote under the previous paragraph, the Member whose recusal is at issue may not vote. {THINK AGAIN ABOUT "VOTE".}

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.

[[*Ethics Advisory Body*][*Conflict Resolution Body*]

22. The [ethics advisory][conflict resolution] body shall comprise three persons appointed by a Meeting of the Parties [upon a consensus recommendation of the TEAP [or another body]]. Members of the ethics advisory body should have expertise in conflict of interest and other ethics issues and should not be current or former Members of the TEAP, TOCs, or TSBs. {Role of the Oz Sec?} {Member to have experience in conflict resolution or law?}
23. Members of the body may be appointed for terms of three years except that, of the first three appointments to the body, one term is to be for one year and one term is to be for two years. {Management of the body, e.g. financial implications?}
24. The term of any person appointed to the body may be re-appointed by the Parties only for one further term.]
25. {There should be rules of procedure for the conflict resolution body as part of this TOR or another set of operating procedure/guidelines for TOCs.}

Annex

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 dependant 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 dependant, 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 dependant, 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.]
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