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United Nations Environment Programme

Persistent Organic Pollutants Review Committee

Second meeting

Geneva, 6–10 November 2006

Item 4 (a) of the provisional agenda*

Operational issues: confidentiality arrangements

Confidentiality arrangements

Note by the Secretariat

Introduction

1. Paragraph 19, “Confidentiality of data,” of the terms of reference of the Persistent Organic Pollutants Review Committee, adopted by the Conference of the Parties in its decision SC-1/7, reads as follows:

“The Committee shall establish confidentiality arrangements as a matter of priority. In handling confidential information and in establishing such arrangements, the Committee shall ensure that paragraph 5 of Article 9 of the Convention is respected.”

2. Paragraph 5 of Article 9 of the Stockholm Convention reads as follows:

“For the purposes of this Convention, information on health and safety of humans and the environment shall not be regarded as confidential. Parties that exchange other information pursuant to this Convention shall protect any confidential information as mutually agreed.”

3. The first meeting of the Persistent Organic Pollutants Review Committee, held in Geneva from 7 to 11 November 2005, addressed the issue of the confidentiality of data used in its work and adopted decision POPRC-1/1¹ on provisional confidentiality arrangements. The decision was adopted on the understanding, first, that experts should be able to elect not to be sent confidential information; second, that confidential information submitted to the Secretariat would, where possible, be redrafted in such a way as to render it not confidential; and, third, that experts could specify in which form of mail they wished information to be sent to them. In addition, Parties should be encouraged not to submit confidential information.² In the decision, the Review Committee also requested the Secretariat to develop draft confidentiality arrangements for consideration by the Committee at its next meeting.

* UNEP/POPS/POPRC.2/1.

¹ UNEP/POPS/POPRC.1/10, annex I.

² Ibid., para. 34.

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4. At its first meeting, the Review Committee also agreed to establish an intersessional working group to discuss the matter of confidentiality.
5. At its second meeting, in paragraph 6 of its decision SC-2/8, the Conference of the Parties took note of decision POPRC-1/1 and requested the Committee to continue its deliberation on confidentiality issues based on the guidance provided by the Conference of the Parties at its second meeting and to provide its final proposal for confidentiality arrangements for consideration by the Conference at its third meeting.
6. Pursuant to decision POPRC-1/1, the Secretariat prepared a draft code of practice for the treatment of confidential information, set forth in the annex to the present note. In preparing the draft code of practice, the Secretariat took into consideration the requirements of the Stockholm Convention, the provisions of the terms of reference of the Committee, the conclusions of the discussions of the issue by the Committee and the Conference of the Parties, and relevant precedents under other international treaties.

Possible action by the Committee

7. The Committee may wish to review the draft code of practice, amend it as necessary and submit the final proposal to the Conference of the Parties at its third meeting with a request to proceed with legal screening and possible endorsement of the arrangements.

Annex

Draft code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee

I. Principles

1. It is understood that designation of information as confidential could limit the ability of the Committee to fully exercise its mandate as a subsidiary body to the Conference of the Parties of the Stockholm Convention which should work in an open and transparent way. Therefore, any party submitting information shall exercise the utmost restraint in designating information as confidential.
2. Pursuant to paragraph 5 of Article 9 of the Convention, information on health and safety of humans and the environment shall not be regarded as confidential.
3. In application of paragraph 5 of Article 9 of the Convention, information submitted under the following provisions of the Convention shall not be identified and labelled as confidential for the purposes of the work of the Committee:
 - (a) Information submitted pursuant to paragraphs (b)–(g) of Annex E to the Convention;
 - (b) Information submitted pursuant to paragraphs (b) (iv), (c) (i), (c) (iii) and (e)–(g) of Annex F to the Convention;
 - (c) Information which cannot be labelled as confidential according to domestic legislation of the State or regional economic integration organization of the origin of the information.
4. In accordance with paragraph 5 of Article 9 of the Convention, Parties that exchange other information shall protect any confidential information as mutually agreed.
5. Any party shall have the right to designate information or parts of it as confidential, except as otherwise provided in paragraphs 2 and 3 above, and request that its confidentiality be protected in accordance with the present Code.
6. Access to confidential information shall be restricted to members, authorized staff of the Secretariat and the submitting party. Confidential information shall not be disclosed in any way to any other person, whether legal or physical. Confidential information shall not be put in the public domain. Confidential information shall be protected from unauthorized disclosure.

II. Definitions

7. “A member” means a member of the Committee, appointed under paragraphs 2–9 of the annex to decision SC-1/7 of the Conference of the Parties (“Terms of reference of the Persistent Organic Pollutants Review Committee”), who has filed with the Chair a declaration of non-disclosure;
8. “A party” means a Party or an observer to the Stockholm Convention;
9. “The Secretariat” means the Secretariat of the Stockholm Convention;
10. “Information” means any type of information or data provided to the Committee under Article 8 of the Convention;
11. “Confidential information” means any information that has been designated as confidential by the party submitting the information in accordance with the principles set above, and that is not otherwise available in the public domain;
12. “Recommendations and reports” means recommendations and reports to the Conference of the Parties adopted by the Committee under paragraphs 33–35 of the annex to decision SC-1/7;
13. “Decisions” means decisions adopted by the Committee under paragraph 35 of the annex to decision SC-1/7;
14. “Declaration of non-disclosure” means a copy of the declaration set forth in annex II to the present code, signed and dated by the member making the declaration.

III. Scope

15. The present code of practice shall be applied to information received by the Committee under Article 8 of the Convention in the work of the meetings of the Committee, in the intersessional period and to the work of any working group established under paragraph 29 of the annex to decision SC-1/7, and to the use of conclusions based on and reference to confidential information in recommendations and reports of the Committee.
16. When a meeting of the Committee has to invoke confidential information, the meeting shall be held in closed session in accordance with the rules of procedure of the Conference of the Parties, applied *mutatis mutandis*. The submitting party may be invited to participate in this session.
17. Decisions of the Committee shall not contain any reference to confidential information.

IV. Identification

18. Indication of any information to be put forward by a party as confidential shall be submitted separately, and in hard copy, from other information, shall be clearly identified and labelled as confidential, and requires the application of the Code. The assertion of confidentiality shall be accompanied by documentation of the party's basis for such identification.
19. When receiving an indication that a party intends to label some information as confidential, the Secretariat or the Chair of the Committee shall consider with the party the need for such a labelling and agree on the applicability of the Code to the information item in question.
20. In the event that an agreement is reached on the labelling of an information item as confidential, the procedures described below shall apply.

V. Procedures

21. The submitter of the confidential information shall be deemed responsible for any contractual or other arrangements for the transmission of this information until the Secretariat confirms its receipt.
22. The Secretariat shall confirm receipt of an assertion of confidentiality and provide a written assurance to the party that the information will be protected in accordance with the code.
23. The Secretariat shall ensure that any information it receives that has been designated as confidential by a party is protected in accordance with the code.
24. Information designated as confidential shall be stored in a secure, locked location. Only authorized Secretariat staff shall be given access to this information, in accordance with procedures in annex I to the code and additional procedures to be established by the Executive Secretary of the Secretariat if needed.
25. All Secretariat staff reviewing confidential information shall be required to file with the Executive Secretary a declaration of non-disclosure. The obligation of Secretariat staff to protect confidential information shall continue after completion of his or her services.
26. Secretariat staff shall not be given access to review information designated as confidential if a known potential conflict of interest with regard to that information has been disclosed.
27. Information designated as confidential shall not be distributed or disclosed to non-authorized individuals or organizations and shall not be distributed beyond the Secretariat's control.
28. Secretariat staff with a need to handle information designated as confidential shall be instructed in methods to protect the confidentiality of such information.
29. Upon finalization of procedures under Article 8 of the Convention, the Secretariat shall return any confidential information to the party that submitted information or, if the submitting party wishes so, destroy the information.
30. Any internal documentation developed that contains information designated as confidential shall also be considered confidential and shall be handled in accordance with the above procedures. Confidential information shall not be included in the recommendations and reports of the Committee.
31. The Secretariat shall make publicly available information on its policies and procedures to protect confidential information.

32. Independent of the present code, all Secretariat staff members are subject to United Nations regulations and standards of conduct, even after termination of the employment contract. This contains specific provisions that prohibit staff from disclosing information made known to them in their official role.
33. The Executive Secretary shall be responsible for notifying his or her staff of their respective responsibilities.
34. Only members and Secretariat staff who have filed declarations of non-disclosure shall have access to confidential information.
35. Members shall be able to access confidential information as requested.

Annex I

Internal Secretariat procedures

The Secretariat will establish the following internal procedures to implement the Code:

- (a) The Secretariat is responsible for ensuring proper receipt, storage and handling of confidential information;
- (b) Confidential information will only be accepted in hard copy from parties, in accordance with the code. The information will not be entered in an electronic database to avoid possible disclosure;
- (c) The confidential information will be stored in a secure, locked location to be used only to store the information. Only staff members who have filed declarations of non-disclosure will have access to the location where the information is stored;
- (d) All documents submitted from parties with confidential information will be marked clearly as "Confidential" on a separate cover page. It is expected that parties will submit confidential information with labels marking it as such on all pages;
- (e) The Secretariat will establish a logging system for tracking the receipt and handling of confidential documents. The system will record the date when the information is received, the party that submitted the information and assign a log number to the document. In addition, the system would track sign-out and return of confidential documents by authorized personnel;
- (f) All authorized secretariat staff will be given instruction on correct procedures for handling confidential information;
- (g) Individual staff members will be authorized to access confidential information on a need-to-know basis;
- (h) Staff who are authorized to access confidential documents will ensure that the documents are never left unattended in an empty office. If confidential information must be transported to an external location, the staff member shall ensure that the document is under his or her supervision at all times, and in a sealed envelope;
- (i) Under no circumstances will members be allowed to copy confidential information or review it away from Secretariat supervision;
- (j) Confidential information will not be sent to experts for review;
- (k) The Executive Secretary will be held responsible for the implementation of the above internal procedures.

Annex II

I. All members shall complete, sign and file with the Chair the following

DECLARATION OF NON-DISCLOSURE

In accordance with the code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee, I agree to the following:

1. I acknowledge having received a copy of the code, a copy of which is attached.
2. I acknowledge having read and understood the code.
3. I agree to be bound by, and to adhere to, the provisions of the code and, accordingly, without limitation, to treat confidentially all confidential information that I may view in implementing my functions of an expert of the POPs Review Committee.

Name:

Executed on this _____ day of _____, 200 .

Signature: _____

II. All relevant secretariat staff shall sign, complete and file with the Executive Secretary the following

DECLARATION OF NON-DISCLOSURE

In accordance with the code of practice for the treatment of confidential information in the Persistent Organic Pollutants Review Committee, I agree to the following:

1. I acknowledge having received a copy of the code, a copy of which is attached.
2. I acknowledge having read and understood the code.
3. I agree to be bound by, and to adhere to, the provisions of the code and, accordingly, without limitation, to treat confidentially all confidential information that I may view in providing secretariat support to the work of the POPs Review Committee.

Name:

Executed on this _____ day of _____, 200 .

Signature: _____
