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EXECUTIVE COMMITTEE OF
THE MULTILATERAL FUND FOR THE
IMPLEMENTATION OF THE MONTREAL PROTOCOL
Sixty-seventh Meeting
Bangkok, 16-20 July 2012

DISTRIBUTION OF CONFIDENTIAL DOCUMENTS (DECISION 66/55)

* re-issued for technical reasons.

Pre-session documents of the Executive Committee of the Multilateral Fund for the Implementation of the Montreal Protocol are without prejudice to any decision that the Executive Committee might take following issuance of the document.

Background

1. At the 66th meeting, the representatives of Belgium, Finland and the United Kingdom of Great Britain and Northern Ireland submitted a proposal for a draft decision on the distribution of confidential documents, requesting the Secretariat to provide any identified technical information or Executive Committee document to any designated individual identified to be on the delegation of the requesting Executive Committee member, and to upload all documents to be considered at an Executive Committee meeting onto the Multilateral Fund website unless requested not to do so by the Executive Committee. One of the proponent members explained that the purpose of the draft decision was to ensure that members of multi-country delegations might obtain timely access to documents when preparing for Executive Committee meetings. A number of members expressed an incomplete grasp of the proposed solution and its implications for the disclosure of confidential or sensitive information.

2. Following the discussion, the Executive Committee deferred consideration of the distribution of confidential documents to the 67th meeting of the Executive Committee and requested the Secretariat to review current practice and decisions and to propose for consideration at the 67th meeting measures to ensure secure and timely distribution of confidential material to designated members of the Executive Committee (decision 66/55).

3. This document has been prepared by the Secretariat in compliance with the aforementioned decision. The document addresses two main issues: one related to the distribution of documents and the other related to confidential material. The document also includes several examples on the distribution and management of confidential materials by the Executive Committee

Current practices and decisions regarding the distribution of Executive Committee meeting documents

Schedule for the distribution of pre-session documents

4. Pre-session documents for Executive Committee meetings are normally issued four weeks in advance of the meeting¹. Pre-session documents that cannot be issued within the four week-deadline, with the exception of those indicating corrections or revisions, must be issued at least two weeks before the meeting (decision 18/3(a)) and only under exceptional circumstances could significant new issues be raised less than one week before the two-week deadline (decision 18/3(d)).

5. In the event that an Executive Committee Meeting would be scheduled immediately following a session of an Open-ended Working Group (OEWG) of the Parties to the Montreal Protocol or a Meeting of the Parties (MOP), the Secretariat would make all new documents available to members 15 days before the start of that meeting (decision 59/35).

6. For environmental and economic reasons all Executive Committee meetings since the 55th meeting have been paperless and printed documents are no longer dispatched to members by courier. Documents for individual agenda items are currently distributed electronically through the Multilateral Fund public website. Occasionally a document may not be ready by the four-week deadline or a corrigendum or addendum to a document may be issued and in these cases participants of Executive Committee meetings would be alerted by email to the issuance and web posting of any such documents.

Access to pre-session meeting documents

7. Prior to the 46th meeting the distribution of pre-session meeting documents was limited to participants of Executive Committee meetings as printed documents and, since the 26th meeting, also

¹ (UNEP/OzL.Pro/ExCom/7/30 Annex III, para. 3) and (UNEP/OzL.Pro/ExCom/8/29 Annex III, para. 3.6).

electronically through a password protected website/intranet. Following the recommendations in the 2004 evaluation and review of the Financial Mechanism of the Montreal Protocol (document UNEP/OzL.Pro.16/11), the Executive Committee removed the restriction on pre-session documents “while restricting access to any project documents that a Party requested to be classified as such until the Executive Committee’s consideration of the matter” (decision 45/59(b)). From the 46th meeting onwards pre-session documents have also been posted on the public Multilateral Fund website.

Availability of project documentation to Executive Committee members

8. Until the 17th meeting, pre-session documents regarding project proposals included the full project proposal documentation as submitted by bilateral and/or implementing agencies to the Secretariat. Following discussions at the 17th meeting on the project review process the Executive Committee decided that for each clearly approvable project, it would not need to review the full project documents, and requested the Secretariat to send only its recommended approval and information adequate for a full understanding of the implications of the project. The Committee also decided that full project documentation would still be available to Executive Committee members and observers for individual projects on request (decision 17/18).

9. Bilateral and implementing agencies have an obligation to provide the Secretariat with all the information it requires to complete its review of projects proposed for submission to the Executive Committee while safeguarding, as appropriate, information considered by Article 5 Governments or enterprises to be commercially sensitive (decision 33/14).

Documents for the Sub-group on the Production Sector

10. The Sub-group on the Production Sector (Sub-group), a subsidiary body of the Executive Committee, was set up in 1996 to assist the Executive Committee in developing guidelines for funding projects targeted at the phase-out of the production of ozone depleting substances (ODS) and subsequently mandated in 1998 to review and recommend the approval of production sector phase-out projects. The Executive Committee would normally reconstitute the Sub-group at the first meeting of the year based on the annual membership of the Executive Committee. From the 47th to the 56th meetings the Sub-group was not reconstituted, but since the 57th meeting (2009) there has been a Sub-group to work on issues with respect to the HCFC production sector (decision 56/64).

11. Documents for meetings of the Sub-group may contain sensitive and confidential information and as such their distribution has always been limited. In the past, documents were distributed to members of the Sub-group as printed documents either in sealed envelope when the Sub-group met in the margins of the first Executive Committee meeting of the year (i.e. when the membership of the sub-group was not known in advance of the meeting), or dispatched together with pre-session documents to members of the Sub-group only for the second and third meetings of the year. Production sector documents, with the exception of those restricted to be circulated by hard copy only, are currently available to Executive Committee members on a password protected website/intranet².

Current decisions of the Executive Committee regarding confidential or sensitive information and data

12. The current practice regarding the distribution of confidential documents is based mainly on decisions 31/47(e)(ii) and 33/14(a) and, as noted in paragraph 7 above, one of the recommendations in the 2004 evaluation and review of the Financial Mechanism of the Montreal Protocol. Through

² The Secretariat provides usernames and passwords to heads of each Executive Committee member delegation to access password protected areas of the website. Other delegates are requested to obtain a username and password to access the restricted area through their heads of delegations (see the “Information note for participants”).

decision 31/47(e)(ii), the Executive Committee requested the Secretariat “to maintain the confidentiality of verification data, while ensuring that Executive Committee members had the necessary information to facilitate review and decision-making”, while through decision 33/14(a), the Executive Committee “requested the implementing agencies to provide the Secretariat with all the information it required to complete its review of projects proposed for submission to the Executive Committee while safeguarding, as appropriate, information considered by governments or enterprises to be commercially sensitive.”

13. A review of the decisions regarding confidentiality issues and examples of their application including the distribution of confidential material is provided below:

14. At the 31st meeting, the Sub-group noted concerns expressed by the Government of Argentina about various elements of the recently completed audit report of the Argentina CFC production sector. In consideration of this concern, the Committee decided to maintain the confidentiality of verification data, while ensuring that Executive Committee members had the necessary information to facilitate review and decision-making (decision 31/47).

15. During the preparatory phase of the 33rd meeting the World Bank communicated to the Secretariat its concerns about safeguarding the commercial sensitivity of technical information provided in support of a project submitted on behalf of the Government of India. In addressing this issue, the Committee requested the implementing agencies provide the Secretariat with all the information it required to complete its review of projects proposed for submission to the Executive Committee while safeguarding, as appropriate, information considered by governments or enterprises to be commercially sensitive (decision 33/14).

16. At its 37th meeting the Executive Committee requested the Secretariat, in consultation with the implementing agencies, to draft guidelines for the financing of projects using such technology, including the protection as well as the use of the related confidential information for project review on a need-to-know basis, and submit them to the Committee for its approval (decision 37/62(c)). At its 38th meeting the Executive Committee approved guidelines for the financing of projects using technology that is not in the public domain (Annex XIV of document UNEP/OzL.Pro/ExCom/38/70/Rev.1). with the objectives of protecting, to the extent practicable, Technical Information not in the Public Domain while ensuring that the Executive Committee, with the assistance of the Secretariat, receives full and fair disclosure of all aspects of a project proposal necessary to assure its eligibility for funding. Under the guidelines the Secretariat will only disclose Identified Technical Information to the Executive Committee with the agreement of the implementing agency following its consultation with the country concerned. If the Executive Committee requests disclosure of all the technical information but does not receive the required consent from the implementing agency in consultation with the country concerned, the project proposal will be deemed to have been withdrawn. (See Annex I for details).

17. At the 40th meeting an embargo was placed on document UNEP/OzL.Pro/ExCom/40/2, “Recommendation on the nomination for the post of Chief Officer of the Fund Secretariat: a report from the Recruitment Committee pursuant to decision 39/58 (g)”, due to the confidential nature of the content. The aforementioned document was made available in printed form only to heads of delegations of members of the Executive Committee in a session that was closed to all observers, co-opted countries and the Secretariat. At its 41st meeting, the Committee agreed that the document would remain confidential and could be disclosed to Parties on a need-to-know basis.

18. The World Bank submitted a draft of the report "Global assessment of CTC phase-out in the chlor-alkali sector" to the 55th meeting (UNEP/OzL.Pro/ExCom/55/49), and requested the Secretariat to limit its distribution due to the commercial nature of the data presented. Based on this request, the document was not posted on the Secretariat public website and was made available to meeting participants through the password protected Executive Committee intranet being used at that time.

19. At the request of the Government of China, access to documents for the inter-sessional consultations on the HCFC sector plans for China (Beijing, 22-24 February 2011) and for a contact group that continued its discussions at the 63rd meeting, was restricted. The documents concerned were placed in a password protected website only accessible by members of the Executive Committee and implementing agencies.

20. At the 64th meeting UNDP, on behalf of the Government of Mexico, submitted a project “Phase-out of HCFC-141b in fully formulated systems for rigid and integral skin PU foams at PU system houses and their local customers in Mexico” as part of the HCFC phase-out strategy for Mexico. While the documentation submitted to the Secretariat contained all the information necessary for the review of the project, the documentation forwarded to members of the Executive Committee that had requested it excluded any information that was considered by Mexico to be commercially sensitive.

21. The Government of China submitted through the World Bank a draft report of the technical audit of the HCFC production sector in China to the 66th meeting. In an official communication, the Government of China requested that the Secretariat consider the confidentiality of the data contained in the report of the technical audit of the HCFC production sector. As the Sub-group for 2012 would only be constituted at the 66th meeting (April 2012), the Secretariat consulted with the Chair of the Executive Committee on the process to follow to ensure that members had time to study the lengthy report prior to the 66th meeting. Following consultation with the Chair, the Secretariat wrote to the 14 members of the 2012 Executive Committee as endorsed by the 23rd meeting of the Parties (decision XXIII/19) informing them that, due to the confidential nature of the technical audit report for the HCFC production sector in China, it would only be made available to members upon request and only in hard copy by express courier. Accordingly the Secretariat sent copies of the report to a number of members who had requested it.

22. It is also to be noted that the distribution of pre-session documents with confidential information is limited to members of the Executive Committee and they are not posted on the public website. No restrictions have ever been placed on the final reports of Executive Committee meetings which have always been for general distribution.

Summary

23. From the analysis on the handling of confidential material it can be concluded that:

- (a) The Secretariat has access to all the information it requires to conduct the review of projects while the confidential nature of some data from Article 5 countries is respected;
- (b) Governments, Executive Committee members, and bilateral and implementing agencies are granted the right to request that the distribution of certain documentation be limited if information contained therein is considered to be confidential;
- (c) In some cases an Article 5 country may request that commercially sensitive information be safeguarded by restricting the document containing it to a particular mode of distribution; for example, that only a printed document be sent to members of the Executive Committee;
- (d) Documents for Executive Committee meetings that contain information of a confidential or sensitive nature are not posted on the public website. The Secretariat had always conveyed such documents to Executive Committee members either through a password-protected website/intranet or by other appropriate means such as e-mail, fax or express courier. At the 40th meeting the document relating to the recruitment of the Chief Officer was made available in a printed form only to heads of delegations of members of

the Executive Committee in a session closed to all observers, co-opted countries and the Secretariat; and

- (e) Executive Committee members that are designated to the Sub-group on the production sector can obtain related documents in an electronic format through a password protected website/intranet unless a government concerned has requested that a specific document or documents be limited to printed distribution and to heads of Executive Committee delegations only.

Secretariat's recommendation

24. The Executive Committee may wish to:

- (a) Take note of document UNEP/OzL.Pro/ExCom/67/36; and
- (b) Consider whether any further decision is required to protect documents regarded by either governments of countries, the Executive Committee and/or bilateral and implementing agencies to be confidential and the appropriate action the Secretariat should take to maintain the confidentiality of these documents, while ensuring that Executive Committee members and co-opted countries in their respective delegations can obtain timely access to pre-session meeting documents.

Annex I**EXTRACT OF “GUIDELINES ON FUNDING OF TECHNOLOGY NOT IN THE PUBLIC DOMAIN” (ANNEX XIV OF DOCUMENT UNEP/OZL.PRO/EXCOM/38/70/REV.1)**Part III : Review by Executive Committee**(a) Determination by Secretariat**

23. Prior to submitting its recommendations and information concerning a project proposal to the Executive Committee, the Secretariat will review the Identified Technical Information contained in a project proposal to determine whether that information ought to be included in its initial submission to the Executive Committee. In making this determination, the Secretariat will balance the need to maintain the confidentiality of the Identified Technical Information against the Executive Committee’s need to be briefed in appropriate detail. Initially, the Secretariat will only disclose Identified Technical Information to the Executive Committee that it considers is essential to enable the Executive Committee to take a decision.

24. Whenever the Secretariat determines that it need not disclose Identified Technical Information to the Executive Committee, it will note this fact in its recommendations to the Executive Committee.

25. If the Secretariat determines that it needs to disclose Identified Technical Information to the Executive Committee, it will inform the Implementing Agency of this determination.

26. The Implementing Agency, in consultation with the country from which the project proposal originated, will inform the Secretariat either of its agreement that the Secretariat disclose the requested Identified Technical Information to the Executive Committee without restriction or its disagreement. The Secretariat will report the latter to the Executive Committee, including if appropriate, a statement that it is unable to make a positive recommendation.

(b) Request from Executive Committee

27. Any member of the Executive Committee may, at any time, request that the Secretariat disclose to the entire Executive Committee any Identified Technical Information contained in a project proposal. Until such a request is either complied with or withdrawn, the Executive Committee will suspend consideration of the project proposal.

28. Upon receipt of a request under paragraph 27, the Secretariat will inform the relevant Implementing Agency of the request from the Executive Committee.

29. The Implementing Agency, in consultation with the country from which the project proposal originated, will either agree to the disclosure to the Executive Committee of the requested Identified Technical Information without restriction or will inform the Secretariat that the Secretariat may not disclose the Identified Technical Information to the Executive Committee.

30. If the Implementing Agency consents to the disclosure of Identified Technical Information to the Executive Committee without restriction, the Secretariat will disclose the Identified Technical Information to the Executive Committee. In doing so, the Secretariat will point out the confidential nature of the Identified Technical Information to the Executive Committee. Nevertheless, the disclosure of the Identified Technical Information to the Executive Committee creates, in itself, no legal obligation on behalf of the members of the Executive Committee.

31. If the Implementing Agency does not consent to the disclosure of the Identified Technical Information to the Executive Committee, the Secretariat will inform the Executive Committee of this decision. Unless the Executive Committee withdraws its request to have the Identified Technical Information disclosed to it, the project proposal will be deemed to have been withdrawn.