

Legal arrangements for seconding staff to support the work of the Transitional Committee

Background note by the Secretary to the Transitional Committee

I. Background

1. Following the information on the working arrangements for the Technical Support Unit (TSU) provided in documents TC-1/4 and TC-2/3/Rev.1, this document responds to the request by the Transitional Committee (TC) at its second meeting for the Secretary to the TC to provide further legal background information on the arrangements for the TSU. This note highlights the application of United Nations Rules and Regulations with respect to the secondment of staff to the TSU to support the work of the TC for the design of the Green Climate Fund.

II. Legal arrangements for staff seconded to support the work of the Transitional Committee

2. Pursuant to decision 1/CP.16, paragraph 111, the Executive Secretary, in consultation with the President of the Conference of the Parties (COP), has made arrangements enabling relevant United Nations agencies, international financial institutions and multilateral development banks, along with the UNFCCC secretariat and the Global Environment Facility, to second staff to the TSU, which has been established to support the work of the TC. The secretariat has signed Memoranda of Agreement (MoA) with each respective donor organization for the secondment of staff to the TSU in accordance with the provisions of the United Nations Administrative Instruction on "Gratis personnel" (ST/AI/1999/6). As a further requirement of the Administrative Instruction, each gratis personnel signed an Undertaking in which he or she, inter alia, agrees to comply with United Nations Rules and Regulations.

3. The Administrative Instruction provides that gratis personnel can be accepted to provide temporary and urgent assistance in the case of new and/or expanded mandates of the United Nations or to provide expertise not available within the United Nations for very specialized functions, for a limited and specified period of time. It implements United Nations General Assembly resolution 51/243 of 15 September 1997 and resolution 52/234 of 26 June 1998.

4. The MoA was drafted to ensure, inter alia, that gratis personnel are seconded in accordance with United Nations Rules and Regulations. It also aims to ensure that gratis personnel respect the impartiality and independence of the United Nations and the UNFCCC secretariat, and avoid any conflict of interest. To that end, while gratis personnel are not considered staff members of the United Nations or the UNFCCC secretariat, by signing the Undertaking they agree to comply with United Nations Rules and Regulations. This includes the duty to comply with United Nations policies on conflict of interest as reflected in the Staff Regulations, the United Nations Code of Conduct,¹ the Standards of Conduct for the International Civil Service,² and other internal standards developed by the United Nations Ethics Office.³

5. In particular, the United Nations Staff Regulations state in provision 1.2 (m) on conflict of interest that: "Staff members shall not be actively associated with the management of, or hold a financial interest in, any profit-making, business or other concern, if it were possible for the staff member or the profit-making, business or other concern to benefit from such association or financial interest by reason of his or her position with the United Nations."

6. In addition, the Standards of Conduct for the International Civil Service state that "[i]f the impartiality of the international civil service is to be maintained, international civil servants must remain independent of any authority outside their organization; their conduct must reflect independence. In keeping with their oath of office, they should not seek nor should they accept instructions from any

¹ See document ST/SGB/2002/13 "Status, Basic Rights and Duties of UN Staff Members".

² The "Standards of conduct for the international civil service", contained in document A/56/30, annex II, was adopted by the International Civil Service Commission in 2001, welcomed by the United Nations General Assembly in its resolution 56/244 of 24 December 2001, and promulgated by the Secretary-General in bulletin ST/SGB/2002/13.

³ See document ST/SGB/2005/22 "Ethics Office: Terms of Reference".

Government, person or entity external to the organization. It cannot be too strongly stressed that international civil servants are not, in any sense, representatives of Governments or other entities, nor are they proponents of their policies. This applies equally to those on secondment from Governments and to those whose services have been made available from elsewhere [emphasis added]. International civil servants should be constantly aware that through their allegiance to the Charter and the corresponding instruments of each organization, member States and their representatives are committed to respect this independent status” (see document A/56/30, annex II, paragraph 8).

III. Memoranda of Agreement and Undertaking: provisions on conflict of interest

7. Both the MoA and the Undertaking address conflict of interest concerning gratis personnel, and specify that:

(a) The gratis personnel shall perform their functions in full compliance with the instructions of the Executive Secretary or any person acting on her behalf;

(b) The gratis personnel shall undertake to respect the impartiality and independence of the UNFCCC secretariat and shall neither seek nor accept instructions regarding their functions as a gratis personnel from any Government or from any authority external to the UNFCCC secretariat and the TC;

(c) The gratis personnel shall refrain from any conduct that would adversely reflect on the UNFCCC secretariat or the United Nations and shall not engage in any activity that is incompatible with the aims and objectives of the United Nations, as contained in the United Nations Charter;

(d) The gratis personnel shall exercise the utmost discretion in all matters relating to their functions and shall not communicate, at any time, without the authorization of the Executive Secretary or a person authorized by her, to the media or to any institution, person, Government or other authority external to the UNFCCC secretariat, any information that has not been made public, and which has become known to them by reason of their association with the UNFCCC secretariat. They shall not use any such information without the written authorization of the Executive Secretary or a person authorized by her, and in any event, such information shall not be used for personal gain. These obligations do not lapse upon expiration of the present agreement;

(e) The gratis personnel shall comply with relevant rules, regulations, instructions, procedures or directives issued by the United Nations applicable to the UNFCCC secretariat.

8. Staff seconded to the TSU provide expert advice and support the work of the TC – they do not take decisions with respect to the design of the Green Climate Fund, as this is the sole prerogative of the TC. In the event of an actual or potential conflict of interest, the gratis personnel is required to disclose to the secretariat such actual or potential conflict of interest in relation to a specific issue and refrain from participating in the relevant activity.

9. It should be noted that neither the MoA nor the Undertaking address possible institutional conflict of interest. As noted above, the COP requested the Executive Secretary to make arrangements with relevant United Nations agencies, international financial institutions and multilateral development banks, along with the secretariat and the Global Environment Facility to second staff to support the work of the Transitional Committee. While the COP has invited the World Bank to serve as interim trustee of the Green Climate Fund (see paragraph 107 of decision 1/CP.16), as a multilateral development bank the World Bank meets the criteria to second staff to support the work of the TC in accordance with paragraph 111 of decision 1/CP.16. The COP has provided no guidance to the Executive Secretary concerning any limitations with respect to the institutions to be selected in accordance with paragraph 111 of decision 1/CP.16.

IV. Conclusion

10. In conclusion, the measures put in place by the Executive Secretary for seconding staff to support the work of the TC are in accordance with United Nations Rules and Regulations, and adequately address any actual or potential conflict of interest of such staff. The Executive Secretary has made best efforts to implement the request of the COP. The Executive Secretary will comply with any further guidance from the COP on this matter.