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Draft Guidelines

Guidelines on preventing potential and addressing actual and perceived conflicts of interest in relation to the Santiago network

Version 3

DRAFT



United Nations
Framework Convention on
Climate Change

COVER NOTE

1. Background

1. The Conference of the Parties serving as the meeting of the Parties to the Paris Agreement (CMA), by decision 2/CMA.2, noted in decision 2/CP.25, established, as part of the Warsaw International Mechanism, the Santiago network for averting, minimizing and addressing loss and damage associated with the adverse effects of climate change.
2. The CMA by decision 12/CMA.4, endorsed in decision 11/CP.27, adopted the terms of reference of the Santiago network and decided that as part of its structure, the Santiago network will have a hosted secretariat, to be known as the Santiago network secretariat, an Advisory Board and a network of member organizations, bodies, networks and experts.
3. The CMA by decision 6/CMA.5, endorsed in decision 2/CP.28, requested the UNFCCC secretariat to develop draft guidelines on preventing potential and addressing actual and perceived conflicts of interest in relation to the Santiago network, including any conflicts of interest that may arise when organizations, bodies, networks and experts are engaged in providing technical support to the Santiago network secretariat while responding to technical assistance requests, or when the host of the Santiago network secretariat is responding as an organization, body, network or expert to technical assistance requests, for review and approval by the Advisory Board of the Santiago network at its 1st meeting

2. Purpose

1. The purpose of the guidelines is to safeguard against any potential, actual and perceived conflicts of interest that may arise within the Santiago network. These include any conflicts of interest that may arise when organizations, bodies, networks and experts are engaged in providing technical support to the Santiago network secretariat while responding to technical assistance requests, or when the host of the Santiago network secretariat is responding as an organization, body, network or expert to technical assistance requests¹.

3. Recommendations to the Advisory Board of the Santiago network

The Advisory Board of the Santiago network may wish to review and approve the guidelines in accordance with decision 6/CMA.5 paragraph 23, endorsed in decision 2/CP.28.

Guidelines on preventing potential and addressing actual and perceived conflicts of interest in relation to the Santiago network

¹ Decision 6/CMA.5 paragraph 23, endorsed in decision 2/CP.28

1. Scope, purpose and applicability

1. These guidelines aim at preventing potential and addressing actual and perceived conflicts of interest in relation to the Santiago network (the guidelines), these include any conflicts of interest that may arise when organizations, bodies, networks and experts (OBNEs) are engaged in providing technical support to the Santiago network secretariat while responding to technical assistance requests, or when the host of the Santiago network secretariat is responding as an OBNE to technical assistance requests².
2. The guidelines apply to the host of the Santiago network, the Santiago network secretariat, Advisory Board members and representatives, and Members of the Santiago network.³
3. The guidelines aim at preventing potential and addressing any actual and perceived conflict of interest which could impair the ability to carry out duties and responsibilities in the interest of the Santiago network or create an unfair advantage for the Host, the Santiago network secretariat, Members, and Advisory Board members and representatives.
4. Conflicts of interest of the personnel of the Host and those of the personnel of the Secretariat and Members of the Santiago network will be addressed according to the policies, rules and regulations of the respective organizations.

2. Definitions

5. Covered Entities – these guidelines apply to the following entities, collectively referred to as “Covered Entities”: the Host of the Santiago network, the Santiago network secretariat, organizations, bodies, networks and experts member of the Santiago network.
6. Covered Individuals – these guidelines apply to the following individuals, collectively referred to as “Covered individuals”: Board Members and representatives, and experts member of the Santiago network.
7. Host – the organization or consortium of organizations selected to host and support the functions of the Santiago network secretariat.
8. Secretariat – the hosted secretariat that facilitates the work of the Santiago network⁴.
9. Organizations, bodies, networks and experts - OBNEs covering a wide range of topics relevant to averting, minimizing and addressing loss and damage that may apply to become member of the Santiago network.
10. Members - OBNEs that have been designated as members of the Santiago network in accordance with the guidelines for the designation of organizations, bodies, networks and experts as members of the Santiago network.
11. Advisory Board members – members of the Advisory board referred to in decision 12/CMA.4, Annex 1 paragraph 8, endorsed in decision 2/CP.28.

² Decision 6/CMA.5 paragraph 23, endorsed by decision 2/CP.28

³ Decision 12/CMA.4 paragraph 3, endorsed by decision 11/CP.27

⁴ Decision 12/CMA.4, Annex 1 paragraph 3 (a), endorsed by decision 2/CP.28

12. Advisory Board representatives – representatives of the constituencies referred to in decision 12/CMA.4, Annex 1 paragraph 9, endorsed in decision 2/CP.28.

3. Conflicts of interest

13. Conflict of interest – for the purpose of these guidelines, any personal or financial interest which could impair the ability to carry out duties and responsibilities in the interest of the Santiago network or create an unfair advantage for a Covered Entity or Covered Individual.

14. A conflict of interest may be potential, actual and perceived, defined as follows:

a. Potential conflict of interest - a conflict of interest that occurs when a Covered Entity or Covered Individual is or could be in a situation that may result in a conflict of interest.

b. Actual conflict of interest - a conflict of interest that occurs when a Covered Entity or Covered Individual faces a real and existing conflict of interest that has been established according to the procedures contained or referred to in these guidelines.

c. Perceived conflict of interest - a conflict of interest that occurs when a Covered Entity or Covered Individual is or could be in a situation that may appear, according to a reasonable neutral third party observer, to be a conflict of interest, even if it is not an actual and potential conflict of interest.

15. In general, and without limitation, conflicts of interest may exist in the following situations:

(a) when the Host receives an unfair advantage as a consequence of hosting the Secretariat;

(b) when the Secretariat is in a circumstance or has an interest which could impair its ability to carry out its duties and responsibilities in the interest of the Santiago network, including when the Host is responding as Member to technical assistance requests through the Santiago network;

(c) when Members are in a circumstance or have a personal or financial interest which could impair their ability to carry out their duties and responsibilities in the interest of the Santiago network or that creates an unfair advantage, including when Members are engaged in providing technical support to the Secretariat while responding to technical assistance requests;

(e) when Advisory Board members have a personal or financial interest which may be affected by their deliberations or decision-making.

(e) when Advisory Board representatives have a personal or financial interest which may be affected by their participation in the deliberations of the Advisory Board.

16. If an actual, potential and perceived conflict of interest arises, the Covered Entity or expert member to the Santiago network (Expert) concerned shall promptly refer the matter in writing to the Chair of the Conflict of Interest Committee (the Committee) for guidance.

17. Advisory Board members must promptly disclose to the Advisory Board and recuse themselves from any deliberations or decision-making where their personal or financial interests may be affected, in order to avoid a conflict of interest or the appearance of one⁵.

⁵ Reference to AB RoPs

3.1. Preventing potential conflicts of interest

3.1.1. Preventing potential conflicts of interest of the Host

18. The Host shall implement these guidelines⁶. The Host will not apply or seek to apply undue influence on the decision-making processes of the Secretariat and will not engage in any conduct that breaches or facilitates the breach of these guidelines.
19. The Secretariat will be hosted as a dedicated secretariat in accordance with the terms of reference of the Santiago network, relevant decisions of the governing body or bodies⁷ and the legal arrangements between the Host and the governing body or bodies.
20. The Host shall appoint, subject to the endorsement of the Advisory Board, the Director of the Secretariat through a merit-based, open and transparent process and will report on the process followed to the Advisory Board.
21. The Director of the Secretariat will be accountable to the Host for administrative issues relating to the administrative effectiveness and efficiency of the Secretariat and to the Advisory Board for the effective implementation of the functions of the Santiago network.
- ~~22.~~ The Host shall provide periodic updates on matters regarding the Secretariat, including on the administrative and infrastructural support as well as the technical backstopping and expertise⁸ provided to the Secretariat.
23. When the Host provides technical support to the Secretariat in relation to a request for technical assistance it will not be eligible to respond to the same request for technical assistance.

3.1.2. Preventing potential conflicts of interests of the Secretariat

24. The Director will manage the personnel of the Secretariat in line with the terms of reference of the Santiago network. The reporting line of the personnel of the Secretariat will be separate from the Host.
25. The Director and the personnel of the Secretariat will discharge their functions solely with the interest and mandate of the Santiago network in view.
26. The personnel of the Secretariat will be made aware of their roles and duties under the Santiago network and will be required to conduct a behaviour consistent with such roles and duties.
27. The Secretariat will have technologies and systems for exchanging, storing, and managing electronic documents and information that will ensure the confidentiality of its documents, including by preventing access by the Host and its personnel to relevant documents and information. The Director of the Secretariat may authorize access to specific documents

⁶ Decision 6/CMA.5, Annex 1, Paragraph 15, endorsed in 2/CP.28

⁷ Nothing in these guidelines prejudices the views of the Parties to the Convention or the views of the Parties to the Paris Agreement or prejudices outcomes on matters related to the governance of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts. This is without prejudice to further consideration of this matter.

⁸ Decision 6/CMA.5, Annex 1, Paragraph 12, endorsed in 2/CP.28

- when the Host or Members are providing technical support to the Secretariat as per paragraph 30 below.
28. The Secretariat will receive, assess and manage the process for responding to requests⁹ for technical assistance in accordance with the guidelines and procedures for responding to requests for technical assistance¹⁰.
 29. The Secretariat, in implementing the guidelines and procedures for responding to request for technical assistance, will ensure the demand-driven nature of all requests for technical assistance submitted under the Santiago network, and safeguard against conflicts of interest in, or, as appropriate, the overconcentration of, the provision and delivery of technical assistance through or by specific OBNEs¹¹.
 30. When the Host is offering to respond to a request for technical assistance as Member¹², the Secretariat will assess and select the proposals received in response to the technical assistance request by following a dedicated process that will be elaborated in the guidelines and procedures for responding to requests for technical assistance¹³ to ensure the impartiality and objectivity of the assessment and selection.
 31. The Secretariat may receive technical support in the domain of averting, minimizing and addressing loss and damage from the Host and from Members, as needed.
 32. The personnel of the Secretariat will follow the standards on conflicts of interest and confidentiality of applicable regulations, rules and policies of the Host as well as the terms and conditions of their respective legal arrangements with the Host, particularly those related to conflicts of interest and confidentiality obligations.
 33. The Secretariat will include in its annual report information on the technical support received from Members and information on the in-kind and other support received by its Host that has contributed to its ability to assume its roles and responsibilities, as set out in the terms of reference of the Santiago network¹⁴.
 34. The Secretariat will maintain a monitoring and evaluation system to assess the timeliness, appropriateness and outcomes of the assistance provided by the Santiago network in accordance with relevant monitoring and evaluation policies of the Host¹⁵. If the Host is responding to technical assistance requests as Member the monitoring and evaluation of the technical assistance will be performed exclusively by personnel of the Secretariat and external experts independent from the Host.

⁹ Decision 12/CMA.4, Annex I, paragraph 6 (c), endorsed by decision 11/CP.27

¹⁰ Decision 12/CMA.4, Annex I, paragraph 17 (b), endorsed by decision 11/CP.27

¹¹ Decision 6/CMA.5, paragraph 26, endorsed by decision 2/CP.28

¹² The Host can be designated as OBNEs member of the Santiago network.

¹³ Decision 12/CMA.4, paragraph 17, endorsed by decision 11/CP.27

¹⁴ Decision 6/CMA.5, paragraph 24 (c), endorsed by decision 2/CP.28

3.1.3. Preventing potential conflicts of interest of Members

35. Members are eligible to respond to requests for technical assistance according to their expertise and the procedures outlined in the guidelines for responding to requests for technical assistance, and to develop, provide and disseminate knowledge and information on averting, minimizing and addressing loss and damage, including comprehensive risk management approaches¹⁶.
36. Members will commit to comply with these guidelines, in addition to their own conflict of interest and ethics policies, for activities involving the Santiago network and will be bound by the terms and conditions of their legal arrangements with the Secretariat, particularly those related to conflicts of interest and confidentiality obligations.
37. Members offering to respond to technical assistance requests will not apply or seek to apply undue influence on the decision-making processes of the Secretariat and will not engage in any conduct that breaches or facilitates the breach of these guidelines.
38. Members offering technical assistance in response to a request will disclose any potential, actual and perceived conflict of interest, including any technical support that may have provided to the Secretariat in relation to the country in question and confirm that they did not have access to any privileged information in relation to that specific request for technical assistance.
39. Members engaged in providing technical support to the Secretariat¹⁷ in relation to a request for technical assistance will not be eligible to respond to the request for technical assistance in question.
40. Members providing support to the Secretariat in developing, providing and disseminating knowledge and information on averting, minimizing and addressing loss and damage may offer to respond to technical assistance requests without any limitation.
41. Members providing technical support for the development of a technical assistance request are eligible to respond to the request for technical assistance in question.

4.1.3 Preventing potential conflicts of interest of Advisory Board members

42. The Advisory Board provides guidance and oversight to the Secretariat on the effective implementation of the functions of the network in accordance with the terms of reference of the Santiago network.
43. The Advisory Board will prevent potential conflicts of interest of its members and representatives in accordance with the relevant provisions of the Rules of Procedure of the Advisory Board.

4.2 Addressing actual and perceived conflicts of interest

44. The Advisory Board will address any actual and perceived conflict of interest in violation of these guidelines that will be brought to its attention by the Conflict of Interest Committee (the Committee) established by the Advisory Board pursuant to paragraph 23 of its Rules of Procedure.

¹⁶ Adapted from Section 2.1 of the OBNEs guidelines.

¹⁷ As per paragraph 23 of these guidelines.

45. The Committee operates under the overall authority and direction of the Advisory Board and shall report to the Advisory Board on its activities.
46. The Committee will consider and provide guidance to the Advisory Board on issues of conflict of interest of the Santiago network. In fulfilling this role, the Committee will:
 - (a) Oversee the implementation of, and compliance with, these guidelines, including by providing recommendations on any breaches of these guidelines;
 - (b) Consider any other matters the Advisory Board deems appropriate.
47. The Committee will comprise of [4] [6] members appointed by the Advisory Board from among its members for a term of one year, with the aim of achieving fair and balanced representation and giving due consideration to gender balance. The Committee will elect a Chair from amongst its members for a term of one year.
48. Except as decided otherwise by the Advisory Board, the Rules of Procedure of the Advisory Board apply mutatis mutandis to the conduct of business of the Committee.
49. Allegations of breach of these guidelines by any Covered Entity or Expert will be submitted in writing and in confidence to the Chair of the Committee who shall bring any such allegation to the attention of the Committee for its consideration.
50. The Committee will promptly review the disclosures of potential, actual and perceived conflicts of interest or any alleged violation of these guidelines communicated to it.
51. The Committee may take, as appropriate, the following action upon formally establishing, after due enquiry, the breach of a provision of these guidelines:
 - (a) Formal warning to the Covered Entity or Expert concerned;
 - (b) An instruction to the Covered Entity or Expert concerned to remedy the breach; and/or
 - (c) A recommendation to the Advisory Board to address the breach, in which case all relevant information will be provided to the Advisory Board.
52. A recommendation by the Committee to the Advisory Board as referred to in paragraph 51 (c) above may include, but is not limited to, a recommendation to:
 - (a) terminate the legal arrangements between the Secretariat and the Member involved in such conflict of interest;
 - (b) terminate the membership of the Member to the Santiago network, indefinitely or for a limited period of time;
 - (c) recommend to the governing body or bodies amendments to or the termination of the legal arrangements with the Host.
53. A Covered Entity or Expert against whom action has been taken by the Committee pursuant to paragraph 52 (a) and (b) above may appeal that action to the Board.
54. The procedures for handling allegations of a breach of the guidelines may be amended by the Advisory Board, upon the recommendation of the Committee.

- 55. The Host will address any allegation of actual and perceived conflict of interest against the personnel of the Secretariat in accordance with the regulations and rules of the Host and provide periodic updates that the Secretariat will include in its annual report.
- 56. Members will address any actual and perceived conflict of interest of their personnel in relation to the Santiago network in accordance with their regulations and rules.
- 57. The Advisory Board will address actual and perceived conflicts of interest of members and representatives in accordance with its Rules of Procedure.

4.3 Accountabilities for overseeing and implementing the guidelines

- 58. The Advisory Board is responsible for overseeing the implementation of these guidelines and addressing any actual and perceived conflict of interest in violation of these guidelines.
- 59. The Director of the Secretariat is responsible for the implementation of these guidelines within the Santiago network and to ensure the compliance of the Secretariat with these guidelines under the oversight of the Advisory Board.
- 60. The Secretariat will include in its annual report information on the activities carried out in implementing these guidelines, including the reporting requirements referred to in paragraphs 33 and 55 above.
- 61. Compliance of the Secretariat with these guidelines will be part of the annual audit of the Santiago network secretariat¹⁸.
- 62. The Host and Members shall be responsible for complying with these guidelines.

4.4 Review and amendment

- 63. The Advisory Board shall keep these guidelines under regular review and amend the guidelines, as necessary, to ensure that the highest ethical standards are applied to the Santiago network.

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¹⁸ Pursuant to paragraph 27 of decision 6/CMA.5, Annex.