

Meeting of the Criteria Expert Group

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The Criteria Expert Group for Persistent Organic Pollutant (POPs), held its second session at the United Nations Office in Vienna between 14th and 18th June 1999. In 1997, the Governing Council of UNEP requested the Executive Director to prepare for and convene an Intergovernmental Negotiating Committee mandated to prepare an international binding instrument for implementing international action on certain persistent organic pollutants (POPs).¹ Initially 12 POPs have been specified to be elaborated on more closely in the instrument. At the first session of the inter-governmental negotiating committee, held in Montreal from 29th June to 3rd July 1998, it was decided to establish a small-sized body, to be called the Criteria

Expert Group, for the purpose of developing science-based criteria and a procedure for identifying additional POPs as candidates for future international action. The Criteria Expert Group held its first session at the Headquarters of the United Nations Economic and Social Commission for Asia and the Pacific in Bangkok from 26th to 30th October 1998. While at the first meeting the Criteria Expert Group enumerated a number of factors to be taken into account when identifying additional POPs, the task of formulating drafts for a provision and annex to be inserted into the internationally binding instrument was left to the second session of the Group.

During the opening of the second session, M. Willis, speaking on behalf of UNEP-Executive-Director Klaus Töpfer, reaffirmed the aim of UNEP to conclude negotia-

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tions by the year 2000 leading to a diplomatic conference in early 2001 to be held in Sweden.² In this respect, he stated that a crucial part of the negotiation process was the establishment of criteria and procedures to add new chemicals and that therefore the Criteria Expert Group should concentrate on determining those criteria and procedures and leave the items that could not be completely resolved to the negotiations of the Intergovernmental Negotiating Committee.

During the second session, the Criteria Expert Group formulated drafts of Article F³ and Annexes D, E and F⁴ for insertion into the draft Convention on POPs.⁵ The Group also proposed a modification of the draft Convention's present Article O⁶ concerning the Conference of the Parties.

The present draft Article F provides for a procedure for identifying additional POPs as dates for future international action. By way of summary this procedure comprises the following steps: 1) submission of a proposal by any Party; 2) verification whether the proposal contains the required information; 3) examination of the proposal by the Persistent Organic Pollutant Review Committee; 4) preparation of a risk profile; 5) preparation of a risk management evaluation; 6) preparation of a recommendation to the COP; and finally 7) a decision by the COP.

According to the present draft Article F, any Party may submit a proposal to the Secretariat of the Convention for listing a substance in one or more of the Annexes to the Convention. The proposal shall contain information as required under Annex D, such as the substance identity,⁷ persistence,⁸ bio-accumulation,⁹ potential for long-range environmental transport¹⁰ and – as should be determined by further negotiations – reasons for concern or adverse effects.

After having received a Party's proposal, the Secretariat shall verify whether the proposal contains the information required by Annex D and in the affirmative shall forward the proposal to the Persistent Organic Pollutants Review Committee and a summary of the proposal to all Parties and Observers. The Committee shall subsequently examine the information required in the proposal and apply the screening criteria in Annex D in a flexible, transparent, and integrative manner. In the case that the screening criteria are fulfilled, the Committee shall proceed to a technical review of the proposal. Prior to the review, the Secretariat shall circulate a copy of the proposal to all Parties and Observer and shall request input relating to the information set out in Annex E. According to the present version of the Annex, the purpose of the review is to evaluate whether the substance is likely to lead to significant adverse human health and/or environmental effects as a result of its long-range environmental transport, such that global action is warranted; for this purpose a risk profile will be developed which further elaborates on and evaluates the information referred to in Annex D and includes different types of relevant information, such as sources, hazard assessment for endpoint(s) of concern, environmental fate, monitoring data, information regarding exposure and national, regional as well as international risk evaluations, assessments or profiles.

The Secretariat shall collect the requested information and forward it to the Persistent Organic Pollutants Review Committee which in turn shall perform the review of the proposal and prepare a risk profile in accordance with Annex E. If the Committee, on the basis of the risk profile, agrees that the proposal should proceed, it shall collect input from all Parties and Observers relating to information on socio-economic considerations as set out in Annex F, regarding efficacy and efficiency of control measures in meeting risk reduction goals,¹² alternatives,¹³ positive or negative impacts on society of implementing control measures,¹⁴ waste and disposal implications,¹⁵ information access and public education, status of control monitoring capacity and finally, any national or regional control action taken.

Subsequently, the Committee shall prepare a risk management evaluation including an analysis of possible control measures for the substance taking into account socio-economic considerations in accordance with Annex F. Based on the risk profile and the risk management evaluation the Committee shall prepare a recommendation as to whether the substance should be considered by the Conference of the Parties (COP) for listing under the Convention. The COP shall then take the final decision whether to list the respective substance.

As the procedure set forth by the Criteria Expert Group requires the establishment of a Persistent Organic Pollutant Review Committee, it became necessary to propose a modification of Article O of the present draft Convention which elaborates on the organization and competence of the COP. According to the Criteria Expert Group's proposal it is up to the COP, at its first meeting, to establish the Committee which shall consist "of a limited number of government-designated experts in chemical assessment or management" to be appointed on the basis of equitable geographical distribution ensuring a balance between developed and developing countries. The COP shall also decide on the terms of reference of the Committee.

The recommendations prepared during the second session of the Criteria Expert Group were forwarded to the Intergovernmental Negotiating Committee to be considered at its third session.¹⁶ As has been expressed during the Group's meeting in Vienna and pending further determination by the Intergovernmental Negotiating Committee, the Criteria Expert Group considers its mandate to be fulfilled; remaining issues are to be solved during the negotiations on a political level. □

NOTES

¹ UNEP Governing Council Decision 19/13 C of 7th February 1997.

² See Report of the Second session of the criteria expert group for persistent organic pollutants, UNEP-Doc. UNEP/POPS/INC/CEG/2/L.1/Rev.1.

³ See Addendum to the Report of the second session of the Criteria Expert Group for Persistent Organic Pollutants, UNEP-Doc. UNEP/POPS/INC/CEG/2/L.1/Add.1.

⁴ See Addendum to the Report of the second session of the Criteria Expert Group for Persistent Organic Pollutants, UNEP-Doc. UNEP/POPS/INC/CEG/2/L.1/Add.2.

⁵ For the text of the present "Preliminary Draft Text of an Internationally Legally Binding Instrument for Implementing International Action on certain Persistent Organic Pollutants", see Annex I in the Report of the Inter-governmental Negotiating Committee for an Internationally Legally Binding Instrument for Im-

plementing International Action on certain Persistent Organic Pollutants the Work of its second Session, UNEP-Doc. UNEP/POPS/Inc.2/6 of 29th January, 1999.

⁶ *Loc.cit. supra* note 3.

⁷ “Substance identity” shall include the name (trade name, Chemical Abstracts Service Registry number, etc.) and structure (also containing specification of isomers) of the respective substance.

⁸ This stipulation requires the provision of evidence that the substance’s half-life in water, soils or sediments is greater than a period to be specified during further negotiations or evidence that the substance is otherwise sufficiently persistent to be of concern within the scope of the Convention. The present draft proposes for the substances half-life in water a period longer than two or six months (to be specified during further negotiations) and for that in soils or sediment a period longer than six months.

⁹ Under the heading of bio-accumulation the present draft requires that evidence be provided that the Bio-Concentration Factor (BCF) or Bio-Accumulation Factor (BAF) in aquatic species for the substance is greater than 5,000 or in the absence of BCF and BAF data, that the log Kow is greater than 4 or 5 (to be specified during further negotiations), or evidence that a substance presents other reasons for concern, such as high bioaccumulation in other species or high toxicity or eco-toxicity, or monitoring data in biota indicating that the bioaccumulation

potential of the substance is sufficient to be of concern within the scope of the Convention.

¹⁰ This element requires, *inter alia*, data concerning measured levels of potential concern in locations distant from the sources of release of the substance, or monitoring data showing that long-range environmental transport of the substance, with the potential for transfer to a receiving environment, may have occurred via air or water or migratory species.

¹¹ Under This provision evidence is required that toxicity or eco-toxicity data indicate the potential for damage to human health or to the environment.

¹² This includes technical feasibility and costs.

¹³ This includes, *inter alia*, costs, efficacy, risk, availability and technical feasibility of alternatives.

¹⁴ This includes, *inter alia*, health, agriculture, bio-diversity, economic aspects and movement towards sustainable development.

¹⁵ This element particularly refers to obsolete stocks of pesticides and clean-up of contaminated sites.

¹⁶ For a report of the Second Session of the Intergovernmental Committee, see Environmental Policy and Law, Vol. 29, at page 81. For the Report of the Third Session of the INC, see Environmental Policy and Law, Vol, 29, at page 222. The next meeting of the INC is scheduled from 20–25 March 2000.