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Conference of the Parties to the Minamata Convention on Mercury First meeting

Geneva, 24–29 September 2017

Item 5 (b) (ii) of the provisional agenda*

Matters for action by the Conference of the Parties at its first meeting: matters stipulated by the Conference of Plenipotentiaries: draft memorandum of understanding between the Conference of the Parties to the Minamata Convention and the Council of the Global Environment Facility

Draft memorandum of understanding between the Conference of Parties to the Minamata Convention on Mercury and the Council of the Global Environment Facility

Note by the secretariat

1. In paragraph 5 of article 13, the Minamata Convention on Mercury defines a mechanism for the provision of adequate, predictable and timely financial resources. The mechanism is to support developing country parties and parties with economies in transition in implementing their obligations under the Convention. Paragraph 6 of article 13 provides that the mechanism will include the Global Environment Facility (GEF) Trust Fund and a specific international programme to support capacity-building and technical assistance. Paragraph 7 of article 13 describes the support to be provided by the GEF Trust Fund, stipulating that it shall provide new, predictable, adequate and timely financial resources to meet costs in support of the implementation of the Convention as agreed by the Conference of the Parties. Furthermore, paragraph 8 of article 13 stipulates that, in providing resources, the GEF Trust Fund should take into account the potential mercury reductions of a proposed activity relative to its costs. Paragraph 10 of article 13 provides that, at the first meeting of the Conference of the Parties, the Conference and the entities comprising the mechanism shall agree upon arrangements to give effect to the operation of the mechanism.
2. The development of guidance to be provided to the GEF Trust Fund by the Conference of the Parties, in accordance with paragraph 7 of article 13 is discussed in document UNEP/MC/COP.1/8, while the operation of the financial mechanism with regard to the specific international programme is discussed in document UNEP/MC/COP.1/9.
3. In paragraph 2 of its resolution on financial arrangements (see UNEP(DTIE)/Hg/CONF/4, annex I), the Conference of Plenipotentiaries decided that the intergovernmental negotiating committee on mercury should develop, for consideration by the Conference of the Parties at its first meeting, a draft memorandum of understanding, to be agreed between the Council of the Global Environment Facility and the Conference, on arrangements to give effect to the relevant provisions of paragraphs 5 to 8 of article 13. At its sixth session, the committee requested the interim secretariat of

* UNEP/MC/COP.1/1.

the Minamata Convention on Mercury to collaborate with the GEF secretariat in the drafting of such a memorandum of understanding, for consideration by the committee at its seventh session.

4. At its seventh session, the committee considered the resulting draft memorandum of understanding, which had been drafted taking into account experience gained under relevant multilateral environmental agreements and existing memorandums of understanding between the GEF Council and the conferences of the parties to various multilateral environmental agreements. The secretariats of those agreements were also consulted, as appropriate. The committee agreed on a revised version on a provisional basis, and decided that that revised version should be sent to the GEF Council for its consideration prior to consideration and formal approval by the Conference of the Parties at its first meeting.

5. The revised draft memorandum was put to the GEF Council for its consideration in October 2016, with a deadline set for comments to be received by the end of January 2017. One Council member provided comments pertaining to editorial corrections, as well as a request to standardize the language in the draft memorandum so as to be consistent with its non-legally binding nature. The comments were not of a substantive nature. All comments of a legal nature were reviewed by the legal office of the United Nations Environment Programme on behalf of the interim secretariat and by the GEF secretariat on behalf of the GEF Council, respectively. On the basis of that review, the following revisions were made to the text that had been provisionally agreed upon at the committee's seventh session:

(a) In paragraph 4, the word "for" was added between "funding" and "activities" to clarify the meaning of the sentence, so as to read: "The Council will ensure the effective operation of GEF as a source of funding for activities for the purpose of the Convention in conformity with the guidance provided to it by the Conference of the Parties";

(b) In paragraph 11, the words "mutually agreed solution" were replaced with "mutually acceptable solution";

(c) In paragraph 22, the word "agreement" was replaced with "consent";

(d) In paragraph 24, the words "come into effect" were replaced with "enter into effect";

(e) The last heading, "Withdrawal", was replaced with "Termination" to clarify that, as there are only two parties to the memorandum of understanding, if one were to exit the arrangement, it would come to an end;

(f) In paragraph, 25, the verb "shall" was replaced with "will";

(g) Throughout the draft memorandum, the hyphen ("-") was removed between the words "developing" and "country" in line with recent trends.

6. Annex I to the present note sets out a draft decision, to be considered by the Conference of the Parties at its first meeting, in which the Conference would decide to approve the text of the memorandum of understanding and enter into that memorandum of understanding with the GEF Council. The updated text of the memorandum, integrating the above-mentioned revisions, without further editing, is set out in annex II to the present note. Upon the adoption of the memorandum by the Conference, it would be transmitted to the GEF Council for its approval. The first GEF Council to be held after the first meeting of the Conference will consider the memorandum with a view to its approval. Once both the Conference and the GEF Council have approved the memorandum, it will come into effect.

Suggested action by the Conference of the Parties

7. Having considered the draft memorandum of understanding, the Conference may wish to formally adopt a decision to approve the text and to enter into that memorandum of understanding with the GEF Council.

Annex I**Draft decision MC-1/[XX]: Memorandum of understanding between the Conference of the Parties to the Minamata Convention on Mercury and the Council of the Global Environment Facility**

The Conference of the Parties

Decides to approve the text of the memorandum of understanding between the Conference of Parties to the Minamata Convention and the Council of the Global Environment Facility, as contained in the annex to the present decision, and to enter into that memorandum of understanding with the Council of the Global Environment Facility.

Annex II

Draft memorandum of understanding between the Conference of the Parties to the Minamata Convention on Mercury and the Council of the Global Environment Facility

The Conference of the Parties to the Minamata Convention on Mercury (hereinafter the “Conference of the Parties”) and the Council of the Global Environment Facility (hereinafter the “Council”),

Recalling paragraph 5 of Article 13 of the Convention, which defines a Mechanism for the provision of adequate, predictable and timely financial resources to support developing country Parties and Parties with economies in transition in implementing their obligations under the Convention, and paragraph 6 of Article 13, which establishes that the Mechanism “shall include the Global Environment Facility Trust Fund; and a specific international Programme to support capacity-building and technical assistance”;

Recalling also paragraph 7 of Article 13 of the Convention, which states that the Global Environment Facility Trust Fund “shall provide new, predictable, adequate and timely financial resources to meet costs in support of implementation of this Convention as agreed by the Conference of the Parties” and that it “shall be operated under the guidance of and be accountable to the Conference of the Parties”, which “shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources” as well as “guidance on an indicative list of categories of activities that could receive support from the Global Environment Facility Trust Fund”;

Recalling further paragraph 7 of Article 13 of the Convention, which stipulates that the Global Environment Facility Trust Fund “shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities”, and paragraph 8 of Article 13, which specifies that in providing resources for an activity, the Global Environment Facility Trust Fund “should take into account the potential mercury reductions of a proposed activity relative to its costs”;

Recalling paragraph 6 of the Instrument for the Establishment of the Restructured Global Environment Facility, as amended at the fifth Assembly of the Global Environment Facility, held in May 2014, which provides that the Global Environment Facility will “[o]perate as one of the entities comprising the financial mechanism of the Minamata Convention on Mercury...”;

Having consulted each other and taking into account the relevant aspects of their governance structures as reflected in their constituent instruments,

Have reached the following understanding:

Definitions

1. For the purpose of the present memorandum of understanding:
 - (a) “Assembly” means the Assembly of the Global Environment Facility (GEF) as defined in the Instrument for the Establishment of the Restructured Global Environment Facility;
 - (b) “Conference of the Parties” means the Conference of the Parties to the Minamata Convention on Mercury;
 - (c) “Convention” means the Minamata Convention on Mercury;
 - (d) “Council” means the Council of the GEF as defined in the Instrument for the Establishment of the Restructured Global Environment Facility;
 - (e) “GEF” means the mechanism established by the Instrument for the Establishment of the Restructured Global Environment Facility;
 - (f) “GEF Instrument” means the Instrument for the Establishment of the Restructured Global Environment Facility;
 - (g) “Party” means Party to the Minamata Convention on Mercury; and
 - (h) “Mercury” means the substances covered under the Minamata Convention on Mercury.

Purpose

2. The purpose of the present memorandum of understanding is to make provision for the relationship between the Conference of the Parties and the Council in order to give effect to the provisions relating to the GEF Trust Fund in paragraphs 5, 6, 7, 8, 10 and 11 of Article 13 of the Convention and paragraphs 6, 26 and 27 of the GEF Instrument.

Guidance from the Conference of the Parties

3. The Conference of the Parties will provide GEF with appropriate guidance in accordance with paragraph 7 of Article 13 of the Convention. The guidance will address overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources, as well as an indicative list of categories of activities that could receive support from the GEF Trust Fund. No later than at its third meeting, and thereafter on a regular basis, the Conference of the Parties will review such guidance pursuant to paragraph 11 of Article 13 and may on the basis of such review decide to update or revise it. Subsequently, the Conference of the Parties will agree with GEF upon any additional arrangements beyond the present memorandum of understanding that may be necessary.

Conformity with guidance from the Conference of the Parties

4. The Council will ensure the effective operation of GEF as a source of funding for activities for the purposes of the Convention in conformity with the guidance provided to it by the Conference of the Parties.

5. The Council may raise with the Conference of the Parties any matter arising from the guidance adopted by the Conference of the Parties. In particular, if the Conference of the Parties provides guidance to GEF subsequent to its first meeting, the Council may consult with the Conference of the Parties to update and clarify existing guidance in light of any new or additional guidance that it receives.

6. Funding decisions for specific projects and activities should be agreed between the developing country Party or the Party with an economy in transition concerned and GEF in accordance with the overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources established by the Conference of the Parties. The GEF Council is responsible for approving the GEF work programmes. If a Party considers that a decision of the Council regarding a specific project is not consistent with the guidance provided by the Conference of the Parties in the context of the Convention, and if after consideration the Conference of the Parties decides that the concern of the relevant Party has merit, the Conference of the Parties will seek clarification from GEF and analyse the observations presented to it by the concerned Party and the response by GEF. In the event that the Conference of the Parties considers that the project decision by the GEF Council is not consistent with the overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources established by the Conference of the Parties, it may request GEF to propose and implement a course of action to address the concern regarding the project in question.

Reporting

7. In order to meet the requirements of accountability to the Conference of the Parties, the Council will prepare and submit reports for consideration by the Conference of the Parties at each of its ordinary meetings. The reports of the Council will be official documents of the meetings of the Conference of the Parties.

8. The reports of the Council will include information on GEF activities related to the Convention and on the consistency of those activities with the guidance provided by the Conference of the Parties, as well as any decision of the Conference of the Parties communicated to GEF, under Article 13 of the Convention.

9. In particular, the reports will provide:

(a) Information on how GEF has responded to the guidance provided by the Conference of the Parties, including, where appropriate, through the incorporation of the guidance into the strategies and operational policies of GEF;

(b) A synthesis of projects approved by the Council and projects being implemented during the reporting period in relation to mercury, with an indication of GEF and other resources allocated to each such project and the implementation status of each project;

(c) In the case of any project proposal included in a work programme that is not approved by the Council, an explanation of why it was not approved.

10. The Council will also report on GEF monitoring and evaluation activities concerning projects in the chemicals and waste focal area in relation to mercury.
11. The Council will also provide information on other matters concerning the discharge of functions under paragraph 5 of Article 13 as it relates to the GEF Trust Fund as may be requested by the Conference of the Parties. If the Council has difficulties in responding to any such request, it will explain its concerns to the Conference of the Parties, and the Conference of the Parties and the Council will find a mutually acceptable solution.
12. The Council will include in its reports to the Conference of the Parties any views that it may have regarding the guidance provided by the Conference of the Parties.
13. The Conference of the Parties may raise with the Council any matter arising from the reports received from the Council and seek GEF clarification and explanation.

Monitoring and evaluation

14. As provided for in paragraph 11 of Article 13 of the Convention, the Conference of the Parties will review, no later than at its third meeting, and thereafter on a regular basis, the level of funding, the guidance provided by the Conference of the Parties to GEF as one of the two entities entrusted to operationalize the Mechanism established under Article 13, and the effectiveness of GEF and its ability to address the changing needs of developing country Parties and Parties with economies in transition. The Conference of the Parties shall, based on such review, take appropriate action to improve the effectiveness of the Mechanism.
15. In preparing its review of GEF as one of the two entities of the financial Mechanism under the Convention, the Conference of the Parties will, as appropriate, take into account the reports of the GEF Independent Evaluation Office and the views of GEF. The GEF Independent Evaluation Office will consult, as appropriate, the secretariat of the Convention when preparing evaluations of the activities of GEF related to mercury.
16. The Conference of the Parties will, on the basis of the above-mentioned reviews, communicate to the Council relevant decisions taken by the Conference of the Parties as a result of such reviews to improve the performance and effectiveness of GEF in assisting developing country Parties and Parties with economies in transition in the implementation of their obligations under the Convention.

Cooperation between secretariats

17. The secretariat of the Convention and the secretariat of GEF will communicate and cooperate with each other and consult on a regular basis to facilitate the effectiveness of GEF in assisting developing country Parties and Parties with economies in transition to implement their obligations under the Convention.
18. In particular, in accordance with the GEF project cycle the secretariat of the Convention will be invited to comment on the project proposals related to mercury under consideration for inclusion in a proposed work programme, especially with regard to their consistency with the guidance provided by the Conference of the Parties.
19. The secretariats of the Convention and GEF will consult each other on draft texts of documents relevant to both the Convention and GEF prior to issuing the final texts of such documents and take any comments into account in their finalization.
20. Official documentation of GEF, including information on project activities, and of the Convention will be made available on the respective websites of GEF and the Convention.

Reciprocal representation

21. On a reciprocal basis, representatives of GEF will be invited to attend meetings of the Conference of the Parties and relevant subsidiary bodies as appropriate, and representatives of the Convention will be invited to attend meetings of the Council and Assembly and other relevant meetings.

Amendments

22. The present memorandum of understanding may be amended at any time by written consent between the Conference of the Parties and the Council.

Interpretation

23. If differences arise in the interpretation of the present memorandum of understanding, any issue may be referred, as appropriate, to the Conference of the Parties and the Council of GEF for consideration. The Conference of the Parties and the Council will make every effort to reach a mutually acceptable solution.

Entry into effect

24. The present memorandum of understanding will enter into effect upon approval by the Conference of the Parties and by the Council.

Termination

25. Either the Conference of the Parties or the Council may terminate the present memorandum of understanding at any time upon written notification to the other. The termination will take effect six months after such notification and will not affect the validity or duration of activities initiated before such termination.
