

51st GEF Council Meeting
October 25 – 27, 2016
Washington, D.C.

Agenda Item 14

**DRAFT MEMORANDUM OF UNDERSTANDING BETWEEN THE CONFERENCE OF THE
PARTIES TO THE MINAMATA CONVENTION ON MERCURY AND THE COUNCIL OF THE
GLOBAL ENVIRONMENT FACILITY**

Recommended Council Decision

The Council, having considered document GEF/C.51/11, *Draft Memorandum of Understanding between the Conference of the Parties to the Minamata Convention on Mercury and the Council of the Global Environment Facility*:

- (a) Invites Council Members to submit to the GEF Secretariat any comments that they may have on the draft Memorandum of Understanding by January 31, 2017;
- (b) Requests the GEF Secretariat to reflect Council Members' views in its collaboration with the Interim Secretariat of the Minamata Convention to revise the draft Memorandum of Understanding, which will be presented to the First Conference of the Parties to the Minamata Convention on Mercury.

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INTRODUCTION

1. This document presents a draft Memorandum of Understanding between the Conference of the Parties (COP) to the Minamata Convention on Mercury and the GEF Council. The Minamata Convention on Mercury is the latest Convention for which the GEF serves as part of its financial mechanism.
2. For each Convention that the GEF serves as a/the financial mechanism, a Memorandum of Understanding makes provisions for the relationship between the COP and the GEF Council. The Memorandum of Understanding, to be agreed by the GEF Council and the COP, also includes arrangements to facilitate cooperation between the Convention secretariat and the GEF secretariat.

Elaboration of Memorandum of Understanding

3. At its 43rd Meeting in November 2012, the GEF Council noted the progress of the Intergovernmental Negotiating Committee (INC) to prepare a global legally binding instrument on mercury and considered document titled *Proposed Framework for a Financial Mechanism for the Future Mercury Convention and Draft Operational Program for Mercury* (GEF/C.43/04). The Council decided: “... if invited by the INC, would welcome the GEF becoming a/or the Financial Mechanism of the future instrument on mercury, and consider this invitation within the framework of the GEF.”
4. The fifth session of the INC agreed to the text of the global legally binding instrument on mercury on January 19, 2013, including article 13 on financial resources and mechanism. Paragraph 5 of that article states that a Mechanism for the provision of adequate, predictable and timely financial resource is defined and that the Mechanism is to support developing country Parties and Parties with economies in transition in implementing their obligations under this Convention. Paragraph 6 of the same article states that the Mechanism shall include: a) The Global Environment Facility Trust Fund; and b) A specific international Programme to support capacity-building and technical assistance.
5. The text of the Convention was adopted and opened for signature at the Diplomatic Conference (Conference of Plenipotentiaries), which was held in Minamata and Kumamoto, Japan, October 9 to 11, 2013. The Diplomatic Conference decided, in the Final Act of the Conference of Plenipotentiaries on the Minamata Convention on Mercury:¹

“Resolution on financial arrangements

The Conference,

¹ See the Final Act of the Conference of Plenipotentiaries on the Minamata Convention on Mercury (UNEP(DTIE)/Hg/CONF/4)

Noting that the Minamata Convention on Mercury defines a financial mechanism to support developing country parties and parties with economies in transition in implementing their obligations under the Convention that includes the Global Environment Facility Trust Fund and a specific international programme to support capacity-building and technical assistance,

Recognizing the specific needs and special circumstances of parties that are Small Island developing States or least developed countries,

- 1. Invites the Council of the Global Environment Facility to give effect to the inclusion of the Global Environment Facility Trust Fund as a part of the financial mechanism of the Minamata Convention and to recommend to the Assembly of the Global Environment Facility, as a matter of urgency, that it make any adjustments to the Instrument for the Establishment of the Restructured Global Environment Facility that are necessary to allow it to fulfil its role in the financial mechanism;*
- 2. Decides that the Committee 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 of the Parties on arrangements to give effect to the relevant provisions of paragraphs 5 to 8 of Article 13;*
- 3. Decides also that the Committee should develop, and adopt provisionally pending formal adoption by the Conference of the Parties at its first meeting, guidance to the Council of the Global Environment Facility on overall strategies, policies, programme priorities, eligibility for access to and utilization of financial resources and an indicative list of categories of activities eligible for support from the Global Environment Facility Trust Fund;*
- 4. Encourages the Council of the Global Environment Facility to apply provisionally any guidance provided to it by the Committee pending the adoption of the guidance by the Conference of the Parties;*
- 5. Invites donors to the Global Environment Facility Trust Fund to contribute through the sixth and subsequent replenishments of the Global Environment Facility Trust Fund additional financial resources adequate to enable the Global Environment Facility to support activities to facilitate the rapid entry into force and effective implementation of the Convention;*
- 6. Requests the Committee to develop for consideration by the Conference of the Parties at its first meeting a proposal for the hosting institution for the specific international programme, including any necessary arrangements with the hosting institution, as well as guidance on the operation and duration of that programme.”*

6. The Fifth GEF Assembly, held in May 2014, gave effect to paragraphs 1 and 5. The GEF Council has also adopted guidance from the diplomatic conference and the sixth and seventh sessions of INC, fulfilling paragraph 4 of the resolution.

7. The sixth session of the INC, held in November 2014, in its decision on the “Memorandum of understanding between the GEF Council and the Conference of the Parties to the Minamata Convention on Mercury”²

“Recall paragraph 2 of resolution II on financial arrangements of the Final Act of the Minamata Convention;

Request the interim secretariat of the Minamata Convention on Mercury to continue to collaborate with the GEF secretariat in the elaboration of a memorandum of understanding between the GEF Council and the Conference of the Parties to the Minamata Convention for consideration at the seventh session of the Intergovernmental Negotiating Committee and adoption at the first meeting of the Conference of Parties to the Minamata Convention on Mercury. In so doing, the interim secretariat should take into account experience gained under relevant multilateral environmental agreements and discussions at the sixth session of the Intergovernmental Negotiating Committee.”

8. Based on INC 6 request, the Interim Secretariat of the Minamata Convention prepared a draft Memorandum of Understanding in consultation with the GEF Secretariat.

9. The seventh session of the INC, held in March 2016, considered a draft Memorandum of Understanding between the Council of the GEF and the COP to the Minamata Convention. The INC agreed on a revised version of the draft Memorandum of Understanding and decided that it should be submitted to the GEF Council for its consideration prior to its consideration and formal adoption at the first meeting of the COP.³

10. The draft Memorandum of Understanding, as agreed by INC 7 for submission to the GEF Council for its consideration, is presented in Annex 1 of this document.

Process towards Memorandum of Understanding Approval

11. The process towards the approval of the Memorandum of Understanding will have the following steps:

² See the Report of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury on the work of its sixth session (UNEP(DTIE)/Hg/INC.6/24)

³ See Report of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury on the work of its seventh session (UNEP (DTIE)/Hg/INC.7/22).

- (a) The Council members are invited to submit any comments that they may have on the draft Memorandum of Understanding, presented in the annex of this document, by January 31, 2017, to the GEF Secretariat;
- (b) The GEF Secretariat will reflect the Council Members' views in the revised draft Memorandum of Understanding, in collaboration with the Interim Secretariat of the Minamata Convention on Mercury;
- (c) The Interim Secretariat of the Minamata Convention on Mercury will transmit the revised draft Memorandum of Understanding to the first COP to the Minamata Convention for its approval;
- (d) Upon its approval of the Memorandum of Understanding, the COP transmits the Memorandum of Understanding to the GEF Council for approval;
- (e) The first GEF Council that takes place after the COP will consider the Memorandum of Understanding for its approval;
- (f) Once the GEF Council and the COP approve the Memorandum of Understanding, it enters into force. At this point, paragraph 6 (e) and 9 (a) of the Instrument for the Establishment of the Restructured Global Environment Facility are in force for the Minamata Convention.

ANNEX 1. DRAFT MEMORANDUM OF UNDERSTANDING BETWEEN THE CONFERENCE OF THE PARTIES OF THE MINAMATA CONVENTION ON MERCURY AND THE COUNCIL OF THE GLOBAL ENVIRONMENT FACILITY

Annex IV of Report of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury on the work of its seventh session, UNEP (DTIE)/Hg/INC.6/24

Draft memorandum of understanding between the Conference of the Parties of 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 “operate 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 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 agreed 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 agreement 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 come into effect upon approval by the Conference of the Parties and by the Council.

Withdrawal

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 shall not affect the validity or duration of activities initiated before such termination.