



GEF/C.45/11.Rev.02

February 19, 2014

GEF Council Meeting
November 5 – 7, 2013
Washington, D.C.

Agenda Item 13

AMENDMENTS TO THE INSTRUMENT

Recommended Council Decision

The Council, having noted the adoption of the Minamata Convention on Mercury and of Resolution 2 on Financial Arrangements by the Diplomatic Conference, and having considered document GEF/C.45/11, *Amendments to the Instrument*, decided to recommend to the Assembly the following amendments to the Instrument:

To delete current paragraph 6 and replace it with a new paragraph 6 that would read:

6. In partial fulfillment of its purposes, the GEF shall:

(a) Operate the financial mechanism for the implementation of the United Nations Framework Convention on Climate Change (UNFCCC), on an interim basis, in accordance with such cooperative arrangements or agreements as may be made pursuant to paragraphs 27 and 31 of this Instrument. The GEF shall also be available to meet the agreed full costs of activities described in Article 12, paragraph 1, of the UNFCCC. The GEF shall be available to continue to serve for the purposes of the financial mechanism for the implementation of the UNFCCC if it is requested to do so by the Conference of the Parties pursuant to its Article 11, paragraph 4. In such respects, the GEF shall function under the guidance of, and be accountable to, the Conference of the Parties which shall decide on policies, program priorities and eligibility criteria related to the UNFCCC pursuant to its Article 11, paragraph 1;

(b) Be, on an interim basis, the institutional structure which carries out the operation of the financial mechanism for the implementation of the Convention on Biological Diversity (CBD), in accordance with such cooperative arrangements or agreements as may be made pursuant to paragraphs 27 and 31 of this Instrument. The GEF shall be available to continue to serve for the purposes of the financial mechanism for the implementation of the CBD if it is requested to do so by the Conference of the Parties pursuant to its Article 21, paragraph 3. In such respects the GEF shall function under the guidance of, and be accountable to, the Conference of the Parties which shall decide on policies, program priorities and eligibility criteria for the purposes of the CBD pursuant to its Article 21, paragraph 1;

(c) Be available to serve as an entity entrusted with the operation of the financial mechanism of the Stockholm Convention on Persistent Organic Pollutants. In such respects the GEF shall function under the guidance of, and be accountable to, the Conference of the Parties which shall decide on policies, strategy, program priorities and eligibility criteria for the purposes of this Convention pursuant to its Article 13, paragraph 7(a);

(d) Be available to serve as a financial mechanism of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD), pursuant to Article 20, paragraph 2 (b),

and Article 21 of the UNCCD. The Council shall consider and approve arrangements to facilitate collaboration between the GEF and the UNCCD and among countries with respect to affected countries, particularly Africa; and

(e) Operate as one of the entities comprising the financial mechanism of the Minamata Convention on Mercury, pursuant to its Article 13, paragraphs 5, 6 and 8. In such respects, the GEF shall operate under the guidance of, and be accountable to the Conference of the Parties, which shall provide guidance on overall strategies, policies, program priorities and eligibility for access to and utilization of financial resources. In addition, the GEF shall receive guidance from the Conference of the Parties on an indicative list of categories of activities that could receive support; and shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities, pursuant to Article 13, paragraph 7, of the Minamata Convention on Mercury.

To delete sub-paragraphs (e) and (f) of paragraph 2 of the Instrument and replace them with a new sub-paragraph (e) that would read:

(e) chemicals and waste.

To delete sub-paragraph (b) of Paragraph 9 and replace it with a new sub-paragraph (b) that would read:

(b) All other GEF grants shall be made available to eligible recipient countries and, where appropriate, for other activities promoting the purposes of the Facility in accordance with this paragraph and any additional eligibility criteria determined by the Council. A country shall be an eligible recipient of GEF grants if it is eligible to receive World Bank (IBRD and/or IDA) financing or if it is an eligible recipient of UNDP technical assistance through its target for resource assignments from the core (specifically TRAC-1 and/or TRAC-2). GEF grants for activities within a focal area addressed by a convention referred to in paragraph 6 but outside the framework of the financial mechanism of the convention, shall only be made available to eligible recipient countries that are party to the convention concerned.

To delete paragraph 11 and replace it with a new paragraph 11 that would read:

11. The GEF shall have an Assembly, a Council, and a Secretariat including an independent evaluation office. In accordance with paragraph 24, a Scientific and Technical Advisory Panel (STAP) shall provide appropriate advice.

To expand paragraph 21 to include the IEO in a new sub-paragraph (i) that would read:

21. (i) there shall be an independent evaluation office headed by a director, appointed by and reporting to the Council, whose responsibility it is to carry out independent evaluations consistent with decisions of the Council; and

The current sub-paragraph (i) would become a new-subparagraph (j) that would read:

(j) perform any other functions assigned to the Secretariat by the Council.

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INTRODUCTION

1. According to paragraph 34 of the GEF Instrument, an amendment to the Instrument “may be approved by consensus by the Assembly upon the recommendation of the Council, after taking into account the views of the Implementing Agencies and the Trustee, and shall become effective after adoption by the Implementing Agencies and the Trustee in accordance with their respective rules and procedural requirements.” This document details the proposed amendments being recommended to the GEF Council for recommendation to the Fifth GEF Assembly.

Amendment to paragraph 6 of the Instrument - The GEF as Financial mechanism of the Minamata Convention on Mercury

2. At its 44th Meeting, the Council decided that,” having reviewed document GEF/C.44/04, Preparing the GEF to serve as the Financial Mechanism of the Minamata Convention on Mercury upon entry into force,

Welcomed with appreciation the invitation from the Intergovernmental Negotiating Committee to Prepare a Global Legally Binding Instrument on Mercury to the GEF, to be the key element of the Financial Mechanism of the Minamata Convention on Mercury as drafted in Article 13 of the agreed text of the Convention, which will be submitted for adoption and opened for signature in Kumamoto and Minamata, Japan in October 2013.

Authorized the use of up to \$10 million for the funding of an early action pre-ratification program for the Minamata Convention to be programed during the remainder of GEF-5, upon request by eligible signatory countries.

Requested the GEF Secretariat to develop initial guidelines consistent with the final resolutions of the diplomatic Conference for enabling activities and pre-ratification projects, in consultation with the interim Secretariat of the Minamata Convention, and present this as an information document at the 45th Council Meeting.

3. Article 13 of the Minamata Convention on Mercury includes the following paragraphs:

Par. 5: A Mechanism for the provision of adequate, predictable, and timely financial resources is hereby defined. The Mechanism is to support developing country Parties and Parties with economies in transition in implementing their obligations under this Convention.

Par. 6: The Mechanism shall include:

- (a) The Global Environment Facility Trust Fund; and*
- (b) A specific international Programme to support capacity-building and technical assistance.*

Par. 7: 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. For the purposes of this Convention, the Global Environment Facility Trust Fund shall be operated under the guidance of and be accountable to the Conference of the Parties. The Conference of the Parties shall provide guidance on overall strategies, policies, programme priorities and eligibility for access to and utilization of financial resources. In addition, the Conference of the Parties shall provide guidance on an indicative list of categories of activities that could receive support from the Global Environment Facility Trust Fund. 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.

Par. 8: 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.

Par. 10: The Conference of the Parties and the entities comprising the Mechanism shall agree upon, at the first meeting of the Conference of the Parties, arrangements to give effect to the above paragraphs.

4. By way of background, the Instrument was amended in 2002 when the GEF Assembly agreed to include the Stockholm Convention on Persistent Organic Pollutants in paragraph 6 of the Instrument, and added Land Degradation and Persistent Organic Pollutants to the GEFs four original focal areas (biological diversity, climate change, international waters and ozone layer depletion)

5. In 2010, the Instrument was amended by the Assembly to add sub-paragraph (b) in paragraph 6 which states:

(b) The GEF shall be available to serve as a financial mechanism of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD), pursuant to Article 20, paragraph 2(b), and Article 21 of the Convention. The Council shall consider and approve arrangements to facilitate collaboration between the GEF and the UNCCD and among countries with respect to affected countries, particularly Africa.

6. As noted above, the Minamata Convention on Mercury establishes a Mechanism for the provision of financial resources. The Mechanism will be comprised of two entities, one of them being the Global Environment Facility Trust Fund. (Article 13, paragraph 6 of the Convention).

7. The Diplomatic Conference that adopted the Minamata Convention on Mercury, October 9 to 11, 2013 in Japan, also adopted a Resolution 2 on Financial Arrangements that:

Invites the Council of the GEF to give effect to the inclusion of the GEF Trust Fund as part of the financial mechanism of the Minamata Convention and to recommend to the

Assembly of the GEF, as a matter of urgency, that it makes any adjustments to the Instrument for the Establishment of the Restructured Global Environment Facility that are necessary to allow it to fulfill its role in the financial mechanism.

8. In response to this invitation and to the formal adoption of the Convention by the Diplomatic Conference, the proposed amendment to add a new sub-paragraph (e) to paragraph 6 of the GEF Instrument is as follows:

(e) Operate as one of the entities comprising the financial mechanism of the Minamata Convention on Mercury pursuant to its Article 13, paragraphs 5, 6 and 8. In such respects, the GEF shall operate under the guidance of, and be accountable to the Conference of the Parties, which shall provide guidance on overall strategies, policies, program priorities and eligibility for access to and utilization of financial resources. In addition, the GEF shall receive guidance from the Conference of the Parties on an indicative list of categories of activities that could receive support; and shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities, pursuant to Article 13, paragraph 7, of the Minamata Convention on Mercury.

Further Amendments to Paragraph 6 of the Instrument

9. The preceding proposal provides the opportunity to further amend Paragraph 6 of the Instrument in order to clarify GEF responsibilities under each of the conventions it serves in an orderly fashion. Therefore, it is proposed that the existing paragraph 6 be deleted and replaced by the following new paragraph 6:

6. In partial fulfillment of its purposes, the GEF shall:

(a) Operate the financial mechanism for the implementation of the United Nations Framework Convention on Climate Change (UNFCCC), on an interim basis, in accordance with such cooperative arrangements or agreements as may be made pursuant to paragraphs 27 and 31 of this Instrument. The GEF shall also be available to meet the agreed full costs of activities described in Article 12, paragraph 1, of the UNFCCC. The GEF shall be available to continue to serve for the purposes of the financial mechanism for the implementation of the UNFCCC if it is requested to do so by the Conference of the Parties pursuant to its Article 11, paragraph 4. In such respects, the GEF shall function under the guidance of, and be accountable to, the Conference of the Parties which shall decide on policies, program priorities and eligibility criteria related to the UNFCCC pursuant to its Article 11, paragraph 1;

(b) Be, on an interim basis, the institutional structure which carries out the operation of the financial mechanism for the implementation of the Convention on Biological Diversity (CBD), in accordance with such cooperative arrangements or agreements as may be made pursuant to paragraphs 27 and 31 of this Instrument. The GEF shall be available to continue to serve for the purposes of the financial mechanism for the implementation of the CBD if it is requested to do so by the Conference of the Parties

pursuant to its Article 21, paragraph 3. In such respects the GEF shall function under the guidance of, and be accountable to, the Conference of the Parties which shall decide on policies, program priorities and eligibility criteria for the purposes of the CBD pursuant to its Article 21, paragraph 1;

(c) Be available to serve as an entity entrusted with the operation of the financial mechanism of the Stockholm Convention on Persistent Organic Pollutants. In such respects the GEF shall function under the guidance of, and be accountable to, the Conference of the Parties which shall decide on policies, strategy, program priorities and eligibility criteria for the purposes of this Convention pursuant to its Article 13, paragraph 7(a);

(d) Be available to serve as a financial mechanism of the United Nations Convention to Combat Desertification in Countries Experiencing Serious Drought and/or Desertification, particularly in Africa (UNCCD), pursuant to Article 20, paragraph 2 (b), and Article 21 of the UNCCD. The Council shall consider and approve arrangements to facilitate collaboration between the GEF and the UNCCD and among countries with respect to affected countries, particularly Africa; and

(e) Operate as one of the entities comprising the financial mechanism of the Minamata Convention on Mercury pursuant to its Article 13, paragraphs 5, 6 and 8. In such respects, the GEF shall operate under the guidance of, and be accountable to the Conference of the Parties, which shall provide guidance on overall strategies, policies, program priorities and eligibility for access to and utilization of financial resources. In addition, the GEF shall receive guidance from the Conference of the Parties on an indicative list of categories of activities that could receive support; and shall provide resources to meet the agreed incremental costs of global environmental benefits and the agreed full costs of some enabling activities, pursuant to Article 13, paragraph 7, of the Minamata Convention on Mercury.

Amendment to paragraph 2 of the Instrument

10. The GEF Instrument, in paragraph 2, separately identifies Persistent Organic Pollutants (POPs) and Ozone Depleting Substances (ODS) as two focal areas. These focal areas sufficed up to the end of GEF 4 where only POPs and ODS programs and projects were funded by the GEF.

11. In GEF 5 with the advancement of the negotiations towards a global instrument on Mercury and the emergence of chemical issues of global concern covered by the Strategic Approach to International Chemicals Management (SAICM), the GEF Council approved a GEF 5 chemicals strategy that broadened the scope of the issues covered by the POPs focal area.

12. A number of external drivers also add justification to the creation of a new focal area which better responds to the demands on the GEF in regard to chemicals and waste.

13. A consultative process on financing options for chemicals and waste was launched by the UNEP Executive Director at COP 4 of the Stockholm Convention. After the consultation, the Executive Director presented an integrated approach that was adopted by the 27th UNEP Governing Council (decision 27/12) in February 2013. The decision also invites the GEF in the context of the 6th replenishment process to revise its focal area structure and strategy in order to address the chemicals and wastes agenda, and consider ways of further strengthening its relations with the conventions it serves as a financial mechanism.

14. In September, 2012, the 3rd International Conference on Chemicals Management (ICCM 3) invited the GEF in the process of the 6th replenishment to consider the priorities and activities identified in the Strategic Approach to International Chemicals Management (SAICM) in support of the achievement of its objectives.

15. It is therefore recommended that sub-paragraph (e) and (f) of paragraph 2 of the Instrument be deleted and replaced by a new sub-paragraph (e) that would read:

(e) chemicals and waste.

16. As a result, the new list of focal areas in paragraph 2 would read as follows:

(a) biological diversity;

(b) climate change;

(c) international waters;

(d) land degradation, primarily desertification and deforestation; and

(e) chemicals and waste.

Amendment to paragraph 9 of the Instrument

17. Paragraph 9 (b) of the Instrument refers to Eligibility and reads as follows:

(b) All other GEF grants shall be made available to eligible recipient countries and, where appropriate, for other activities promoting the purposes of the Facility in accordance with this paragraph and any additional eligibility criteria determined by the Council. A country shall be an eligible recipient of GEF grants if it is eligible to borrow from the World Bank (IBRD and/or IDA) or if it is an eligible recipient of UNDP technical assistance through its country Indicative Planning Figure (IPF). GEF grants for activities within a focal area addressed by a convention referred to in paragraph 6 but outside the framework of the financial mechanism of the convention, shall only be made available to eligible recipient countries that are party to the convention concerned.

18. When referring to a country being an eligible recipient of UNDP technical assistance, the Instrument refers to the “country Indicative Planning Figure (IPF)”. In its decision 95/23¹ on the 1997-1999 successor programming arrangements, the Executive Board of UNDP introduced “a new, more flexible three-tier target for resource assignments from the core [TRAC] scheme for the allocation of resources to the country level, which replaced the IPF scheme.

19. UNDP regular resource allocations for country-level program activities are made within the framework of targets for resource assignments from the core (known as ‘TRACs’). The TRAC is a three-tiered system in which TRAC-1 and TRAC-2 resources are linked in a combined pool, while TRAC-3 resources are made available through a separate pool. TRAC allocations form the financial foundation for the UNDP programmatic presence on the ground. ‘TRAC-1’ refers to the annual level of regular program resources targeted to be available for an individual program country during the programming period. They are allocated centrally, according to TRAC-1 eligibility and other criteria approved by the Executive Board. TRAC-2 was designed to provide the Administrator with the flexibility to allocate regular program resources to high-impact, high-leverage and high-quality program activities and to help UNDP to respond effectively to differentiated country needs (decision 2013/4). From a substantive perspective, TRAC-2 resources are considered fully fungible with TRAC-1 resources. They are allocated, on non-formula-based criteria, in line with regional TRAC-1 allocations. TRAC-3 was established to provide UNDP with the capacity to respond quickly and flexibly to the development needs of countries affected by conflicts and natural disasters.

20. In addition, when referring to country eligibility based on a country’s World Bank engagement, the Instrument refers to a country that can “borrow from the World Bank (IBRD and/or IDA)”. The World Bank (IDA) introduced grants for a select group of low income countries during the IDA-12 replenishment period (2000-2002).

21. Since a portion of the current text of sub-paragraph (b) of paragraph 9 requires updating as explained above, it is proposed that the Council recommend to the Assembly that sub-paragraph (b) of paragraph 9 be deleted and replaced by a new sub-paragraph (b) that would read as follows:

(b) All other GEF grants shall be made available to eligible recipient countries and, where appropriate, for other activities promoting the purposes of the Facility in accordance with this paragraph and any additional eligibility criteria determined by the Council. A country shall be an eligible recipient of GEF grants if it is eligible to receive World Bank (IBRD and/or IDA) financing or if it is an eligible recipient of UNDP technical assistance through its target for resource assignments from the core (specifically TRAC-1 and/or TRAC-2). GEF grants for activities within a focal area addressed by a convention referred to in paragraph 6 but outside the framework of the

¹ See document at <http://web.undp.org/execbrd/pdf/dp1996-1.pdf>.

financial mechanism of the convention, shall only be made available to eligible recipient countries that are party to the convention concerned.

Amendment to paragraphs 11 and 21 of the Instrument

22. The Council, meeting in November 2013, decided to change the name of the Evaluation Office to Independent Evaluation Office. As part of that decision, the Council further requested “the Secretariat and the Evaluation Office to prepare a proposal for amendment of the Instrument to include the Independent Evaluation Office, to be approved by Council before the Assembly in 2014”. It is proposed that the Council recommend to the Assembly to delete paragraph 11 and replace it with a new paragraph 11 that would read:

11. The GEF shall have an Assembly, a Council, and a Secretariat including an independent evaluation office. In accordance with paragraph 24, a Scientific and Technical Advisory Panel (STAP) shall provide appropriate advice.

23. It is also proposed that the Council recommend to the Assembly to expand paragraph 21 to include a new sub-paragraph 21 (i) that would read:

(i) there shall be an independent evaluation office headed by a director, appointed by and reporting to the Council, whose responsibility it is to carry out independent evaluations consistent with decisions of the Council; and

24. The current sub-paragraph (i) would now be a new sub-paragraph (j) that would read:

(j) perform any other functions assigned to the Secretariat by the Council.