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INTERGOVERNMENTAL NEGOTIATING COMMITTEE FOR AN
INTERNATIONAL LEGALLY BINDING INSTRUMENT
FOR IMPLEMENTING INTERNATIONAL ACTION ON
CERTAIN PERSISTENT ORGANIC POLLUTANTS

Seventh session

Geneva, 14-18 July 2003

Item 5 of the provisional agenda*

Preparations for the Conference of the Parties

**DRAFT MEMORANDUM OF UNDERSTANDING BETWEEN THE COUNCIL OF THE
GLOBAL ENVIRONMENT FACILITY AND THE CONFERENCE OF THE
PARTIES TO THE STOCKHOLM CONVENTION ON
PERSISTENT ORGANIC POLLUTANTS****

Note by the secretariat

1. Paragraph 6 of article 13 of the Stockholm Convention on Persistent Organic Pollutants states that “A mechanism for the provision of adequate and sustainable financial resources to developing country Parties and Parties with economies in transition on a grant or concessional basis to assist in their implementation of the Convention is hereby defined. The mechanism shall function under the authority, as appropriate, and guidance of, and be accountable to the Conference of the Parties for the purposes of this Convention. Its operation shall be entrusted to one or more entities, including existing international entities as may be decided upon by the Conference of the Parties.”
2. Paragraph 7 of article 13 of the Stockholm Convention states that “Pursuant to the objectives of this Convention and paragraph 6, the Conference of the Parties shall at its first meeting adopt appropriate guidance to be provided to the mechanism and shall agree with the entity or entities participating in the financial mechanism upon agreements to give effect thereto.”
3. Article 14 of the Convention, states that “The institutional structure of the Global Environment Facility, operated in accordance with the Instrument for the Establishment of the Restructured Global Environment Facility, shall, on an interim basis, be the principal entity entrusted with the operations of the

* UNEP/POPS/INC.7/1

** Stockholm Convention, articles 13 and 14; Conference of Plenipotentiaries of the Stockholm Convention, resolution 1, paragraph 4., report of the Intergovernmental Negotiating Committee on its sixth session (UNEP/POPS/INC.6/22), annex I, decision INC-6/12

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financial mechanism referred to in article 13, for the period between the date of entry into force of this Convention and the first meeting of the Conference of the Parties, or until such time as the Conference of the Parties decides which institutional structure will be designated in accordance with article 13.”

4. At its sixth session, the Intergovernmental Negotiating Committee, in its decision INC-6/12, decided “to initiate a process for developing a draft memorandum of understanding between the Conference of the Parties to the Stockholm Convention and the Global Environment Facility”.

5. Decision INC-6/12 requested “the secretariat to submit to the Intergovernmental Negotiating Committee at its seventh session a review of similar agreements between the Global Environment Facility and the governing bodies of other multilateral environmental agreements, including the relevant experience gained from the use of these agreements between the Global Environment Facility and the governing bodies of other multilateral environmental agreements.” In response to this request, the secretariat has provided the information contained in document UNEP/POPS/INC.7/INF/9.

6. The decision further requested “the secretariat, in consultation with the secretariat of the Global Environment Facility, to prepare a draft memorandum of understanding for consideration by the Intergovernmental Negotiating Committee at its seventh session and to make available to the Committee at that session any comments thereon by Governments”.

7. In response to the request referred to in paragraph 6 above, the secretariat, in consultation with the secretariat of the Global Environment Facility, has prepared for the consideration of the seventh session of the Committee, a draft memorandum of understanding between the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants and the Council of the Global Environment Facility. The draft memorandum is contained in the annex to the present note and has not been formally edited.

8. Following the completion of the draft memorandum of understanding there was insufficient time available to request and collect comments from Governments on the draft memorandum of understanding in advance of the seventh session of the Committee.

9. At its meeting in May 2003, the Council of the Global Environment Facility was informed of the Committee decisions referred to above and requested the secretariat of the Global Environment Facility “to collaborate with the secretariat of the Stockholm Convention to prepare for Council review at its meeting in November 2004 a draft memorandum of understanding between the GEF Council and the Conference of the Parties to the Stockholm Convention outlining arrangements to give effect to article 13, paragraphs 6, 7 and 8 of the Convention” (paragraph 9 (c) of the Joint Summary of the Chairs, GEF Council Meeting, May 14-16, 2003).

Possible action by the Committee

10. The Committee may wish to consider:

(a) Providing any comments on the draft memorandum of understanding between the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants and the Council of the Global Environment Facility, contained in the annex to the present note;

(b) Inviting Governments to provide further comments on the draft memorandum of understanding to the secretariat by 31 December 2003;

(c) Inviting the Council of the Global Environment Facility to provide comments on the draft memorandum of understanding through the secretariat of the Global Environment Facility to the secretariat by 31 December 2003;

- (d) Requesting the secretariat, in collaboration with the secretariat of the Global Environment Facility, to:
- (i) Prepare a revised draft memorandum of understanding taking into account the comments received from Governments and the Council of the Global Environment Facility in response to subparagraphs (b) and (c) above, respectively;
 - (ii) Submit the revised draft to the Conference of the Parties for possible consideration and decision at its first session;
 - (iii) Submit the revised draft to the Council of the Global Environment Facility for possible consideration and decision.

Annex

Draft

MEMORANDUM OF UNDERSTANDING BETWEEN THE CONFERENCE OF THE PARTIES TO THE
STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS
AND THE COUNCIL OF THE GLOBAL ENVIRONMENT FACILITY

The Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants and the Council of the Global Environment Facility:

Recalling Article 13 of the Convention and recognizing that the financial mechanism established pursuant to it is to provide “adequate and sustainable financial resources to developing country Parties and Parties with economies in transition on a grant or concessional basis to assist in their implementation of the Convention” and is to “function under the authority, as appropriate, and guidance of, and be accountable to the Conference of the Parties for the purposes of this Convention”;

Recalling Article 13, paragraph 7, of the Convention which stipulates that, “pursuant to the objectives of the Convention and paragraph 6 of Article 13, the Conference of the Parties shall at its first meeting adopt appropriate guidance to be provided to the mechanism and shall agree with the entity or entities participating in the financial mechanism upon arrangements to give effect thereto”;

Recalling paragraph 6 of the *Instrument for the Establishment of the Restructured Global Environment Facility*, as amended at the second Global Environment Facility Assembly in October 2002, which provides that “the GEF shall also be available to serve as an entity entrusted with the operation of the financial mechanism of the Stockholm Convention on Persistent Organic Pollutants”;

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

Have agreed the following:

Definitions

1. For the purpose of this Memorandum of Understanding:

(a) “Assembly” means the Assembly of the GEF as defined in the *Instrument for the Establishment of the Restructured Global Environment Facility*;

(b) “Conference of the Parties” means Conference of the Parties to the *Stockholm Convention on Persistent Organic Pollutants*;

(c) “Convention” means the *Stockholm Convention on Persistent Organic Pollutants*;

(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*; and

(g) “Party” means Party to the *Stockholm Convention on Persistent Organic Pollutants*.

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 of Article 13, paragraphs 6, 7 and 8 of the Convention and paragraphs 6, 26 and 27 of the GEF Instrument [and, on an interim basis, in accordance with Article 14 of the Convention.]¹

Guidance from the Conference of the Parties

3. The Conference of the Parties will provide the GEF, as an entity entrusted to operate the financial mechanism established under Article 13 of the Convention, with appropriate guidance that the Conference of the Parties may adopt, review, update or revise in pursuance of paragraphs 7 and 8 of Article 13 and will subsequently agree with the GEF upon any additional arrangements beyond this Memorandum of Understanding that may be necessary. The guidance will address, *inter alia*:

(a) Determination of the policy, strategy and programme priorities, as well as clear and detailed criteria and guidelines regarding eligibility for access to and utilization of financial resources including monitoring and evaluation on a regular basis of such utilization;

(b) Provision by the Council of regular reports to the Conference of the Parties on adequacy and sustainability of funding for activities relevant to the implementation of the Convention;

(c) Promotion of multiple-source funding approaches, mechanism and arrangements;

(d) Modalities for the determination in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of the Convention, keeping in mind that the phasing out of persistent organic pollutants might require sustained funding, and the conditions under which that amount will be periodically reviewed; and

(e) Modalities for the provision to interested Parties of assistance with needs assessment, information on available sources of funds and on funding patterns in order to facilitate coordination among them.

Conformity with guidance from the Conference of the Parties

4. The Council will ensure the effective operation of the GEF, as an entity entrusted with the operations of the financial mechanism under the Convention, 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. It will report regularly to the Conference of the Parties on its activities related to the Convention and on the conformity of those activities with the guidance provided 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 the 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.

¹ It is expected that the Conference of the Parties will designate the financial mechanism at its first meeting. In the event that such a designation is not made at the first meeting, text along the lines contained in brackets will need to be inserted into the memorandum of understanding to cover the time until the Conference of the Parties makes such a designation.

6. If a Party to the Convention considers that a decision of the Council regarding a specific project was not made in conformity with the guidance adopted by the Conference of the Parties, the Party may bring the matter to the attention of the Conference of the Parties. The Conference of the Parties will request the Council to provide information on the decision regarding the project. The Conference of the Parties will consider the observations presented to it by the Party and the Council with a view to deciding whether the Council's decision was in conformity with guidance. In the event that the Conference of the Parties considers that this specific project decision taken by the Council does not comply with the guidance adopted by the Conference of the Parties, it may request the Council for further clarification on the specific project decision and its subsequent reconsideration.

Reporting

7. In order to meet the requirements of accountability to the Conference of the Parties, the Council will prepare and submit regular reports to the Conference of the Parties at each ordinary meeting of the Conference of the Parties. The report of the Council will be an official document of the meeting of the Conference of the Parties.

8. The reports will include specific information on how the GEF has applied the guidance determined by the Conference of the Parties, as well as any other decision of the Conference of the Parties communicated to the GEF, under Article 13 of the Convention.

9. In particular, the reports will provide the following information:

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

(b) A synthesis of projects approved by the Council during the reporting period in the persistent organic pollutants focal area with an indication of the GEF and other resources allocated to such projects and the approval status of each project;

(c) A listing of projects approved by the Council in the persistent organic pollutants focal area, with an indication of the total financial resources allocated to these projects; and

(d) In case of any project proposal included in a work programme that is not approved by the Council, the reasons for not being approved.

10. The Council will also report on GEF monitoring and evaluation activities concerning projects in the persistent organic pollutants focal area.

11. The Council will also provide information on other matters concerning the discharge of functions under Article 13, paragraph 6, 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 report to the Conference of the Parties any views it may have on the guidance decided by the Conference of the Parties.

13. The Conference of the Parties may raise with the Council any matter arising from the reports received.

Monitoring and evaluation

14. As provided for in Article 13, paragraph 8, of the Convention, the Conference of the Parties will review, on a regular basis, the effectiveness of the financial mechanism established under the Convention, its ability to address the changing needs of developing country Parties and Parties with economies in transition,

the criteria and guidance referred to in Article 13, paragraph 7 of the Convention, the level of funding as well as the effectiveness of the performance of the GEF as an institutional entity entrusted to operate the financial mechanism.

15. In preparing its review on the effectiveness of the financial mechanism, the Conference of the Parties will, as appropriate, take into account the reports of the GEF independent monitoring and evaluation unit and the views of the GEF. The GEF independent monitoring and evaluation unit will consult, as appropriate, with the Secretariat of the Convention when preparing evaluations of the activities of the GEF related to persistent organic pollutants.

16. The Conference of the Parties, based on the above-mentioned reviews, will communicate to the Council relevant decisions taken by the Conference of the Parties as the result of such reviews, to improve the effectiveness of the financial mechanism in assisting developing country Parties and Parties with economies in transition to implement the Convention.

Cooperation between secretariats

17. The Secretariat of the Convention and the Secretariat of the GEF will communicate and cooperate with each other and consult on a regular basis to facilitate the effectiveness of the financial mechanism in assisting developing country Parties and Parties with economies in transition to implement 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 persistent organic pollutants under consideration for inclusion in a proposed work programme, especially with regard to the consistency of the project proposals with the guidance provided by the Conference of the Parties.

19. The Secretariats of the Convention and of the GEF will reciprocally consult with each other on draft texts of documents relevant to the Convention and the GEF prior to issuing the final texts of such documents.

20. Official documentation of the GEF, including information on project activities, will be made available on its web site. Official documentation of the Convention will be made available on its web site.

Reciprocal Representation

21. On a reciprocal basis, representatives of the GEF will be invited to attend meetings of the Conference of the Parties and representatives of the Convention will be invited to attend meetings of the Council and Assembly.

Amendments

22. This 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, 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 this Memorandum of Understanding at any time upon written notification to the other. The withdrawal will take effect six months after its notification and shall not affect the validity or duration of activities initiated before such termination.
