



**UNITED
NATIONS**



**Framework Convention
on Climate Change**

Distr.
GENERAL

FCCC/SBI/2005/19
15 September 2005

Original: ENGLISH

SUBSIDIARY BODY FOR IMPLEMENTATION

Twenty-third session

Montreal, 28 November to 6 December 2005

Item 6 (a) of the provisional agenda
Financial mechanism (Kyoto Protocol)
Adaptation Fund

**Financial mechanism in the context of the Kyoto Protocol: Memorandum of
Understanding between the Conference of the Parties
and the Council of the Global Environment Facility**

Note by the secretariat

Summary

Article 11 of the Kyoto Protocol provides that guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention, given in relevant decisions of the Conference of the Parties (COP), including those agreed before the adoption of the Kyoto Protocol, shall apply *mutatis mutandis*. No guidance has been provided to the Global Environment Facility (GEF) under this Article.

The COP, by its decision 10/CP.7, established under the Kyoto Protocol the Adaptation Fund to finance concrete adaptation projects and programmes in developing country Parties that are Parties to the Kyoto Protocol, as well as activities identified in paragraph 8 of decision 5/CP.7.

The mechanism through which the Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol (COP/MOP) would provide guidance to the Council of the GEF on the operation of the Adaptation Fund needs to be considered. The Subsidiary Body for Implementation (SBI) is invited to consider this issue and recommend a draft decision for adoption by the COP/MOP.

I. Introduction

A. Background

1. The Memorandum of Understanding¹ (MOU) between the Conference of the Parties (COP) and the Council of the Global Environment Facility (GEF), the entity entrusted with the operation of the financial mechanism of the Convention, governs and defines the roles and responsibilities and details the interaction between the COP and the GEF, under Article 11 of the Convention and paragraphs 26 and 27 of the Instrument for the Establishment of the Restructured Global Environment Facility.²

2. The entry into force of the Kyoto Protocol, the proposed adoption of decisions concerning reporting guidance under Articles 5, 7 and 8 of the Kyoto Protocol³ and the possible provision of guidance on the Adaptation Fund by the Conference of the Parties serving as meeting of the Parties to the Kyoto Protocol (COP/MOP) at its first session, all call for further clarification of the relationship between the COP, the COP/MOP and the GEF in relation to guidance to the GEF and how the existing MOU could be applied to financial matters under the Kyoto Protocol.

B. Scope of the note

3. This note provides background information to assist Parties to determine the status of the MOU between the COP and the GEF in the context of the implementation of the Kyoto Protocol.

C. Possible action by the Subsidiary Body for Implementation

4. The Subsidiary Body for Implementation may wish to recommend a draft decision for adoption by the COP/MOP confirming the operating entity of the financial mechanism of the Convention as the operating entity referred to in Article 11 of the Kyoto Protocol, and to approve the application, *mutatis mutandis*, of the MOU between the COP and the GEF to the Kyoto Protocol until a review of the MOU is deemed necessary. The COP/MOP is invited to decide whether it will communicate any guidance it may develop directly to the GEF or through the COP.

II. Relationship between the Conference of the Parties and the Global Environment Facility

5. Article 11 of the Convention provides for the provision of financial resources to developing country Parties through a financial mechanism that operates under the guidance of, and is accountable to the COP. Following the entry into force of the Convention, the MOU between the COP and the Council of the GEF was agreed by the GEF Council in July 1995 and by the COP at its second session (July 1996). The COP, by its decision 12/CP.2, brought the MOU into force. Since then, the COP has provided guidance to the GEF in accordance with the MOU, and the GEF has reported to the COP on how it has implemented the guidance provided by the COP.

6. Article 11 of the Kyoto Protocol provides that the guidance to the entity or entities entrusted with the operation of the financial mechanism in relevant decisions of the COP, including those agreed before the adoption of the Kyoto Protocol, shall apply *mutatis mutandis*. This provision is limited, however, in subparagraph 2 (a) and (b) of the Article to national communications under Article 4, paragraph 1 (a),

¹ FCCC/CP/1996/15/Add.1.

² <http://thegef.org/gef_instrument3.pdf>.

³ FCCC/KP/CMP/2005/3/Add.2.

and Article 10 (a) of the Kyoto Protocol, and for the provision of resources, including technology transfer, to meet existing commitments as laid out in Article 4, paragraph 1 (a)–(j) of the Convention.

7. The COP, by its decision 10/CP.7 decided that the Adaptation Fund established by the Marrakesh Accords shall be operated and managed by an entity entrusted with the operation of the financial mechanism of the Convention, under the guidance of the COP/MOP, with guidance to be provided by the COP in the period prior to the entry into force of the Kyoto Protocol. No guidance was provided by the COP on the operation of the Adaptation Fund.

8. The GEF, as the entity that operates the financial mechanism of the Convention, reported to the COP, at its eighth session, on efforts made to establish the new climate change funds, including the Adaptation Fund under the Kyoto Protocol. The report of the GEF to the COP⁴ indicated that in May 2002 the GEF Council, in approving the arrangements proposed by the GEF secretariat,⁵ invited the World Bank to act as Trustee and requested the secretariat to mobilize resources for the funds and to inform the COP, at its eighth session, about the arrangements.

9. It is envisaged, however, that guidance will need to be provided to the entity that operates the financial mechanism under the Kyoto Protocol by the COP/MOP at its first session. Such guidance is necessary to ensure that the entity that manages and operates the Adaptation Fund can operationalize it, now that clean development mechanism projects are under way, and shares of proceeds on the CDM project activities will begin to be generated, which will be a source of revenue, in addition to voluntary contributions from Parties, for the Adaptation Fund. Parties may also wish to adopt decisions including guidance on other matters, such as capacity-building in the context of the Kyoto Protocol.

III. Implications of the Memorandum of Understanding to the relationship between the Conference of the Parties serving as the meeting of the Parties, the Conference of the Parties and the Global Environment Facility

10. Neither the Kyoto Protocol, nor decisions recommended for adoption by the COP/MOP specify the designated entity that will operate the financial mechanism under the Kyoto Protocol. No specific guidance has been provided under Article 11 of the Kyoto Protocol and the various COP decisions regarding the means of communication between the COP/MOP and the GEF in the implementation of the Protocol. Draft decisions⁶ forwarded for adoption by the COP/MOP at its first session containing guidelines under Articles 5, 7 and 8 of the Kyoto Protocol refer simply to “the entity or entities entrusted with the operation of the financial mechanism.”⁷

11. According to Article 11, paragraph 2, of the Kyoto Protocol, the guidance to the entity or entities entrusted with the operation of the financial mechanism of the Convention in relevant decisions of the COP, including those agreed before the adoption of the Protocol, shall apply *mutatis mutandis* to the provisions of the paragraph. Since the COP approved, by decision 12/CP.2, the MOU with the GEF Council, the COP has given the GEF, the operating entity entrusted with the financial mechanism of the Convention, guidance on several occasions. It appears from the foregoing that despite the fact that the GEF is not specifically mentioned as the operating entity of the financial mechanism under the Kyoto Protocol, the decisions of the COP adopted before the adoption of the Protocol, and which shall apply *mutatis mutandis* to Article 11, paragraph 2, recognize the GEF as the operating entity and the

⁴ FCCC/CP/2002/4.

⁵ GEF/C.19/6.

⁶ FCCC/KP/CMP/2005/3/Add.2.

⁷ FCCC/KP/CMP/2005/3/Add.2, text F, annex, paragraph 41–43.

MOU adopted by the COP to govern the relationship between the COP and the GEF is therefore applicable *mutatis mutandis* to the Protocol.

12. The MOU clearly provides a means for, *inter alia*, determining and communicating guidance, the GEF conforming with guidance provided, reconsidering funding decisions under the Convention, and reporting of information from the GEF. Therefore it can be applied to the relationship between the COP/MOP and the GEF.

13. In order for the MOU between the COP and the GEF to be made operational for the Kyoto Protocol, the COP/MOP will have to give its approval by confirming the arrangements. The Council of the GEF will also have to agree that the existing MOU between the COP and the Council of the GEF can be applied *mutatis mutandis* to govern the relationship between the COP/MOP and the GEF.
