

2 December 2024

Fourth meeting of the Board

2–5 December 2024

Manila, Philippines

Agenda item 5(b)

Report of the Co-Chairs of the Board – Addendum I: Proposal for procedures for taking decisions between meetings

Expected actions of the Board

The Board will be invited to:

- (a) Consider the enclosed draft proposal for procedures for taking decisions between meetings.
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I. Background

1. The Governing Instrument of the Fund for responding to Loss and Damage¹ provides certain rules of procedure of the Board in chapter III.D. According to paragraph 26 of the Governing Instrument, the Board “will adopt procedures for taking decisions between meetings.”
2. At the second meeting of the Board (B.2), the Co-Chairs proposed, and the Board approved an interim procedure to take decisions between meetings² in the event that a joint determination was made by Co-Chairs that a matter could not be deferred to the subsequent Board meeting.
3. The Board requested the Co-Chairs to undertake consultations on more permanent procedures and in particular to clarify how decisions between meetings (also sometimes referred to as “decisions without a meeting”) will be made.
4. The Board may wish to consider whether to have one procedure only (with or without variations for different circumstances) or procedures tailored for certain decisions depending on factors the Board deems appropriate, or a combination. For example, the Board may consider categorizing various types of decisions that will determine the procedure (or variation) to be used and which may vary (e.g. in cases of approving funding to respond to rapid onset events, or in case of recurring procedural tasks such as appointments to Board committees).
5. The themes raised in this paper aim to provide the Board with tools to decide which of the set of procedures for taking decisions between meetings are most suitable for its purposes, in a manner that would optimize and alleviate the meeting agenda from matters of recurring, procedural or operational nature that need not accumulate until the next Board meeting. This would, in turn, allow the Board the advantage of using its meetings for active discussion on strategic matters and prompt consultation thereupon.
6. To support the Board’s consideration on procedures for taking decisions between meetings, this document is structured as follows:
 - (a) Chapter II provides a brief summary of benchmarking with other funds;
 - (b) Chapter III provides a concept brief for policy and procedural options available to the Board;
 - (c) Annex I provides a schematic representation of the elements for consideration by the Board;
 - (d) Annex II contains a draft decision for the adoption of the procedures;
 - (e) Annex III contains draft procedures for consideration by the Board.

II. Summary of benchmarking with other organizations

7. At B.1 the Board received a background paper on additional rules of procedure of the Board that provided the Board with a comparative analysis of rules of procedures in use by the Boards or Council of five funds.³

¹ As contained in annex I to decisions 1/CP.28 and 5/CMA.5.

² Decision B.2/D.7.

³ Document FLD/B.1/3 titled “Background paper on additional rules of procedure of the Board” compared relevant provisions of the following funds: Adaptation Fund (AF), Green Climate Fund (GCF), Global Environment Facility (GEF), Global Fund to Fight AIDS, Tuberculosis and Malaria (GF), Financial Intermediary Fund for Pandemic Prevention Preparedness and Response (PPR/FIF).

8. The study found that all benchmarked funds adopt decisions without a meeting and some of them have a variety of procedures for taking decisions without a meeting:

(a) **Adaptation Fund:** Intersessional decisions: on an extraordinary basis when the Co-Chairs judge a decision should not wait until the next meeting, they can authorize the secretariat to transmit a decision for no-objection approval. At least 2 weeks are given. If the proposed decision has financial implications, two thirds of members must reply. If an objection cannot be resolved, the item is put on the agenda for the next meeting. Intersessional decisions are deemed to have been taken at headquarters (Rules of procedure of the AF Board, paras. 56–59);

(b) **Global Environmental Facility:** The GEF CEO can transmit a proposal for no-objection approval between meetings if the CEO judges that a decision should not be postponed until the next meeting and a special meeting is not warranted. Each member can comment on behalf of their constituency within a time limit (at least two weeks). If a decision has financial implications, two thirds of members must reply. If there is objection from any member, the item is put on the agenda for next meeting. The CEO must notify members of action taken (Rules of procedure of the GEF Council, paras. 43–45);

(c) **Global Fund to Fight AIDS, Tuberculosis and Malaria: Electronic decisions:** Motions between sessions require a two-thirds majority of both donor and implementor voting groups for passage. At least 10 working days must be given unless urgent. Votes can be approval, disapproval or abstention, and may include commentary and/or questions – but amendments are not permitted. **No objection decisions:** can be on leadership and membership replacements, or funding for grant programmes. If four of both groups object to funding within the prescribed time, the funding is not approved. If four from either group object to other issues, the motion is not approved. (Operating procedures of the Board and Committees of the GF, paras. 25 and 26 respectively);

(d) **Green Climate Fund:** On an extraordinary basis when the co-chairs judge a decision should not be postponed until the next meeting, the GCF secretariat with the co-chairs' approval may transmit the proposed decision for 7–21 days for a no-objection approval. If there is an objection, the co-chairs engage with the objecting GCF Board member(s) and if the objection is upheld, the decision is to be considered by the GCF Board at its next meeting. All written comments/objections are shared with all GCF Board members and alternate members along with a report on actions taken. Until guidelines were agreed on cases in which such decisions may be requested (and those were agreed in 2022), the co-chairs would decide on a case-by-case basis. (GCF rules of procedure, paras. 41–44 and GCF decisionB.32/11);

(e) **Financial Intermediary Fund for Pandemic Prevention Preparedness and Response:** If the PPR/FIF secretariat consulting with the co-chairs judge a decision should not wait until the next meeting but does not warrant a special meeting, the PPR/FIF secretariat may request a no-objection decision. At least 2 weeks shall be given – and this can be extended. If any objection is not retracted within the period, the decision can be revised and resubmitted in consultation with the PPR/FIF co-chairs. If a member objects, wanting decision at meeting, the decision is taken up at next meeting. (PPR/FIF rules of procedure, para. 39).

9. In addition to the above funds, numerous other organizations have developed a variety of “written or “tacit” (i.e. “no objection”) procedures for decision-making. When more than one procedure for taking decisions without a meeting is available, the choice of procedure often depends on some form of categorization of the decisions put for before the Board, such as by theme or by threshold.

III. Concept note on taking decisions between meetings

A. Options for consideration

10. When considering options for taking decisions without a meeting, the Board may wish to consider the following aspects.

(a) One or more procedures

11. One of the first aspects the Board may agree upon is **whether to have one or more procedures, to respond to different circumstances and needs**. For instance, the Board may have one *default procedure* and a different procedure for funding for rapid onset events and other extraordinary circumstances. However, a single (default) procedure could also foresee *variations to respond to specified circumstances* (such as, but not limited to emergency or closeness to an upcoming event). In such cases it is not that the procedure is different, but that some of the steps or elements which constitute it are altered to meet a particular need (e.g. automatic delegation for an initiative or shorted time frames for response).

12. For instance, a “**tacit**” (“**no objection**”) **procedure** is one where the Board is presented with a decision that will be adopted at the end of a specified period, unless the proposal is met with a formal unconditional objection or a request for amendment to a decision. Such a procedure is often used for recurring matters, such as appointments of members to committees, accreditation of observer organizations or for decisions under policies that themselves provide procedural elements for their implementation (e.g. approval of deviations or waivers under certain policies), even amendments or updates under existing policies and rules.

13. Tacit procedures could have **variations built in** to provide for a shorter period of time for the adoption of a decision on the basis of operational requirements. Different time frames could be agreed ahead of time: Board members could agree on a default period of time and also agree to a fix minimum that could be used for time-sensitive situations. Timing variations could also depend on the type of decision (e.g. appointments to committees may require no less than a week).

(b) Categorization on the basis of the matter for decision

14. Whether selecting between one or more procedures or agreeing on different time frames for the adoption of decisions, the Board may wish to consider **categorizing decisions by themes or by other elements and combinations**.

15. Similar categorization could rely not on the difference between the types of decisions, but **on thresholds**.

16. The choice of procedure between meetings could also depend on whether a document or initiative has already been subject to previous discussions at the Board meeting or another form of consultation with the Board.

(c) Dealing with emergencies

17. For the early start of the Fund, and in order to quickly respond to the consequences of climate events, the Co-Chairs propose that the Board also consider decision-making options to ensure rapid approval.

18. While the operational model is being developed, the Co-Chairs propose that the Board consider the options for procedures to approve the Fund’s response via an expeditious decision without a Board meeting or other such appropriate means.

B. Procedural aspects

19. Regardless of the number or type of procedures retained by the Board for decisions between meetings, the Board will also need to consider and agree on the

concrete steps that would be taken for and within each procedure. This involves: agreeing on the originator of the request/proposal for decision (Co-Chairs, Executive Director); gaining approval for its transmission to the Board (Co-Chairs); its transmittal to permissible recipients (members of the Board, advisers, active observers); publication on the website (or not); developing/applying rules for sharing comments or questions; developing/applying rules for raising a formal objection or putting forward a motion; and developing/applying time frames for each stage of the procedures (default and/or emergency ones, as appropriate).

20. In the case of a “tacit” (“no objection”) procedure, the Board would also need to consider how to maximize the efficiency of such procedure by recording questions and comments without necessarily stopping the decision-making process. In many cases, the Board may wish to consider a staged approach that foresees the possibility to raise questions and clarifications, or to request the recording of comments within a prescribed period, but without these necessarily suspending the procedure.

21. Similarly, the Board may agree to procedural steps to deal with concerns on a particular aspect of the decision; here too without hindering the decision being adopted. In certain instances, the Board could foresee that questions or concerns could turn into a “motion” to alter the proposal, and may even consider thresholds for this (i.e. if a sufficient number of Board members support the alteration or if a certain number of Board members share the same concern). In such cases, the Board may consider a list of permissible alterations that could be [formally] motioned and lead to the adoption of a decision with conditions regarding a particular detail or aspect of implementation. The advantage of such an approach is that an individual issue regarding an aspect of the proposal would not necessarily result in blocking the adoption of the whole decision. Such considerations could align decision-making between meetings with the elements that the Board may retain for its procedures regarding consensus building and exhausting consensus.

IV. Conclusion

22. Paragraph 26 of the Governing Instrument permits the Board to take decisions between meetings and provides that the Board will adopt procedures for this. The Board needs to consider a series of elements for the crafting of one or more procedures that can be flexibly adapted to meet the requirements of the Board both in the early stages of its work and as business requirements evolve and the Fund matures. A schematic representation of the elements discussed above is provided at annex I to facilitate further discussions.

V. Recommendations

23. After careful deliberations, the Co-Chairs wish to make a series of proposals on procedures for taking decisions without a Board meeting. Noting that more time is needed to fully develop arrangements for rapid disbursement to respond to climate events, and while such systems are being considered and operationalized, the Co-Chairs propose that the Board first consider developing a set of standard procedures for making decisions between meetings (including a procedure for decisions on administrative matters), and also that the Board mandate the Co-Chairs to conduct further work to address the ability of the Board to take decisions to address the Fund’s response to the consequences of climate events at a later stage.

Annex I

Procedures for taking decisions between meetings: elements for Board consideration (schematic)

Number of procedures	Possible categorization	Possible variations/comments
One procedure (for all decisions between meetings)	One procedure for all decisions	One procedure with variations for : - Time, on the basis of o Urgency o Type of decisions - Types of decisions o Recurring, procedural, on the basis of thresholds/ceilings
Two or more procedures (depending on factors, to be determined by the Board)	<ul style="list-style-type: none"> • Default (regular) procedure • Expedite procedure (Emergency procedure) • Procedure for decisions on administrative matters 	<p>The procedures could be similar or completely different</p> <p>The emergency procedure could foresee shorter time frames but also relax (or skip) other steps in the process for the same of time</p>
	<ul style="list-style-type: none"> • “Tacit” (“no objection”) procedure <ul style="list-style-type: none"> o Grants or other funding decisions below a certain threshold o Appointments to committees, panels and groups o Appointments of Board-appointed officials <i>ad interim</i> o Accreditation of observer organizations o Pursuant to policies which foresee the use of tacit procedure for implementing decisions o Receiving/Endorsing reports 	<ul style="list-style-type: none"> • “Tacit procedure” could be conceived as the standard (default) procedure which would allow recording of comments, requests for clarifications and objections • A “procedure for taking decisions on administrative matters” could be based on the standard tacit procedure but offer shorter time frames and further flexibility for taking decisions on administrative matters which require prompt but routine attention: <ul style="list-style-type: none"> o Budgetary matters; o Staffing matters; o Audit and related matters; o And so on

For each procedure (or variation), the Board should consider the following procedural elements:

- Originator of the proposal/decision
 - o Co-Chairs, on a recommendation of the Executive Director
- Clearance for submission to the Board
 - o By Co-Chairs
- Designation of the applicable procedure (if multiple procedures exist)
- Designation of time frame (if multiple time frames are available)
- Rules for circulation to the Board (and other stakeholders, e.g. active observers), publication on the website
- Rules for raising questions/requests for clarifications, recording comments, as well as formal objections
- Rules for dealing with comments or (when permitted) objections:
 - o Roles and responsibilities for the Co-Chairs/Secretariat
 - o Associated time frames
 - o Transparency (circulation of comments to the Board)
- Adopted decision to be acknowledged at the next meeting and recorded in that meeting report
- Publication on website

Annex II

Draft decision

The Board, having considered document FRLD/B.4/3/Add.1 titled “Procedures for taking decisions between meetings”:

- (a) Welcomes the Co-Chair’s proposal on procedures for decision-making without a Board meeting;
- (b) Adopts the Procedures for taking decisions between meetings, as set out in annex III to the document (the “Procedures”);
- (c) Requests the Co-Chairs to undertake further consultations with a view of presenting to the Board, no later than at its fifth meeting, a proposal for decisions between meetings in case of rapid onset events.

Annex III

Procedures for taking decisions between meetings

I. Introduction

1. According to the Governing Instrument of the Fund for responding to Loss and Damage the Board “will adopt procedures for taking decisions between meetings”. Decisions without a meeting will occur when in the judgment of both Co-Chairs, including following a recommendation from the Executive Director, a decision could be considered and made between meetings of the Board.
2. The following procedures implement the provisions of the Governing Instrument [and the rules of procedure] by establishing the following procedures for taking decisions between meetings.

II. Tacit procedures

A. Standard tacit procedure

3. The Secretariat, with the approval of the Co-Chairs, shall transmit to members and alternate members of the Board a proposed decision with the invitation to approve the decision on a no-objection basis within a prescribed period – generally 21 calendar days and in any event no less than 7 days from and including the date of transmittal of the draft decision.
4. Copies of such proposal shall be provided to the active observers for their information, unless otherwise determined by the Co-Chairs in compliance with relevant policies on access to information and disclosure.
5. A Board member may submit a “Written Request” to (i) raise a question or request clarification, and/or (ii) record comments, and/or (iii) request the matter to be deferred to the next Board meeting (in which case the Board member(s) raising the Written Request shall provide detailed written reasons as to why a decision cannot be approved at that time). In either case, a request will be made in writing.
6. A communication, including a Written Request from a Board member in respect of the draft decision shall not be considered as an objection unless it meets the requirements of paragraph 7(b) below.
7. If a Written Request is received during the period prescribed for replies, the Co-Chairs will work through such Written Request with the relevant Board member directly. The Co-Chairs may delegate part of this responsibility to the Secretariat. A Written Request will not suspend the prescribed period for replies, unless the Written Request has been received within 3 days from the end of the prescribed period for replies, in which case the time period will be suspended.
 - (a) If the Written Request is raised pursuant to paragraph 5(i) and/or 5(ii) above, the decision shall be deemed approved at the end of the prescribed period, subject to the Co-Chairs having successfully addressed the Written Request;
 - (b) If the Written Request is raised pursuant to paragraph 5(iii) above and the relevant Board member(s) upholds their Written Request following discussion with the Co-Chairs, the draft decision will be considered by the Board at the following Board meeting. If the relevant Board member withdraws their Written Request at any time prior to the Board meeting, the proposed decision shall be deemed approved on the later of (i) the end of the period prescribed for replies, or (ii) the date on which the Written Request is withdrawn, subject to the exceptions in

paragraph 8 below in respect of a Written Request that is withdrawn after the end of the period prescribed for replies.

8. If a Written Request is withdrawn after the prescribed period has expired (and no other Written Requests remain in place), then the relevant decision proposed for approval shall be deemed approved unless the proposed decision, if approved on the date on which the Written Request is withdrawn, would:

(a) Adversely affect third parties in a way that it would not have done had it been approved at the end of the prescribed period for replies;

(b) No longer be appropriate in the light of facts that have emerged, or events that have occurred, in the period between the expiration of the prescribed period for replies and the date on which the Written Request is withdrawn; or

(c) Reinstate or otherwise reapprove a decision that by such date may have lapsed.

9. If any of paragraphs 8(a)–(c) above apply, the Co-Chairs shall determine the course of action with respect to the decision.

10. The Secretariat shall, on behalf of the Co-Chairs, update the members and alternate members of the Board on the status of the draft decision (i) as soon as a Written Request has been received, (ii) at the expiry of the prescribed period and (iii) at any time as requested and/or authorized by the Co-Chairs. The Co-Chairs will provide a detailed written report to the Board on all matters regarding a proposed decision.

11. Decisions approved without a meeting shall be noted at the beginning of the following Board meeting and shall be recorded in the report of that meeting. The report will also reflect comments made through Written Requests pursuant to paragraph 5(ii), unless otherwise indicated in the Written Request.

12. The Secretariat shall circulate the Co-Chairs' report including all Written Requests to members and alternate members of the Board and notify all the members and alternate members of the Board of the action taken pursuant to this paragraph.

B. Procedure for decisions on administrative matters

13. Administrative matters include budgetary issues, staffing, audit and related financial decisions. The procedure may also be used for decisions that follow a request and a subsequent decision from the Board committee in charge of budgetary matters.

14. Approval of the Secretariat's workplan, including for the interim period, is not in the scope of this procedure.

15. The Co-Chairs may issue a proposal for a decision without a Board meeting, using the tacit procedure with the following adjustments:

(a) The prescribed period for replies is generally 14 calendar days and, in any event, no less than 7 days from and including the date of transmittal of the draft decision;

(b) Board members may, within the prescribed period, raise Written Requests to (i) raise a question or request clarification, and/or (ii) record comments, and/or (iii) raise an objection;

(c) If a Written Request is raised by a Board member, the Co-Chairs (including the Secretariat upon delegation by the Co-Chairs) will promptly, and in any event within 36 hours, inform the Board on how they intend to address the Written Request. The Co-Chairs may arrange a virtual technical session on the decision, including if requested by a Board member. A Written Request will not suspend the period prescribed for replies unless it has been received two days (48

hours) or less from the end of the period prescribed for replies, in which case the Co-Chairs will determine when the period prescribed for replies resumes its course and will inform the Board accordingly.

16. At the expiration of the period prescribed for replies, the decision will be deemed approved unless there is a formal objection under paragraph 15(b)(iii) above, complete with written justification for the objection.

17. All other elements of the standard tacit procedure remain applicable to this procedure.
