

Procedural Arrangements for the Paris Replenishment Cycle

Discussion Note¹

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The recent OCP/ecbi Concept Note [A Paris Replenishment Cycle for Contributions to the UNFCCC Financial Mechanism](#) introduces the idea of a joint replenishment of all the funds that are to serve the Financial Mechanism of the new Paris Agreement. This follow-on Discussion Note is meant to provide some input into the discussion of how such a joint replenishment might work.

It starts by re-iterating the short description of the two existing replenishment processes referred to in the original Concept Note, namely that of the Trust Fund of the **Global Environment Facility** (GEF), one of the two operating entities of the Financial Mechanism (FM), which recently completed the sixth round of its four-year replenishment cycle, and that of the Montreal Protocol **Multilateral Fund** (MF), which has already been replenished nine times. The Paris Replenishment procedures proposed for discussion in this Note are based on these two ‘benchmark’ replenishments.

Existing Replenishment Practices

Determining the Envelopes

In the case of the MF, the decision of what the funding envelope should be is taken by the Meeting of the Parties (MOP) of the Montreal Protocol, based on a report prepared by the Technology and Economic Assessment Panel of the Montreal Protocol. Interestingly, the Panel is also requested to provide *indicative figures*, for the two subsequent replenishment periods. The MF replenishment process is therefore genuinely dynamic in the sense of a *dynamic contribution cycle*.³

As regards the replenishment of the GEF Trust Fund, the situation is somewhat more complicated. While, in principle, the funding envelopes are meant to be jointly determined by the COP and the GEF

¹ This Note was written in the authors' purely personal capacity. The views expressed do not necessarily reflect the views of the bodies they are affiliated with.

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³ Benito Müller, Xolisa J. Ngwadla, and Jose D. G. Miguez, with Isabel Cavalier Adarve, Carlos Fuller, Tosi Mpanu-Mpanu and Nagmeldin G. Elhassan (2015), [A Dynamic Contribution Cycle: Sequencing Contributions in the 2015 Paris Agreement](#), OCP/ecbi Concept Note, October 2015.

Council (based on a needs assessment by the COP), in practice, the GEF Secretariat and the World Bank (as GEF Trustee) invite potential contributors (subject to a minimum contribution requirement) who then decide on who else (recipients, NGOs) is admitted and in what function. The replenishment envelope is determined by the participants of these meetings, based on a [programming document](#) (with an Annex detailing proposed indicative resource envelopes for the different focal areas etc.), prepared by the GEF Secretariat.

Determining the Contributions

In the MF, the determination of individual contributions from developed (non-Article 5) countries is rule-based, using the UN scale of assessment. Individual contributions to the GEF Trust Fund replenishments are negotiated by those participating in the replenishment meetings.

In the case of the GEF, individual pledges are inscribed in a Draft World Bank Resolution to be considered by the GEF Council and approved by the World Bank Executive Directors. Contributors are expected to deposit (***Qualified Instruments of Commitments***⁴ (IOCs) with the World Bank. It is a fact that such (unqualified) IOCs are binding contractual obligations under international law, which ***allow countries to lock in spending across budget cycles.***⁵

Replenishing the Financial Mechanism of the Paris Agreement

The replenishment processes of the MF and the GEF have similarities and differences. However, the one feature that would be different in the Paris Replenishment is that the latter would most likely involve several funds.⁶ This means that there would have to be additional coordination between the relevant bodies.

Box. 1. The Remit of the Standing Committee on Finance

112. Decides to establish a Standing Committee under the Conference of the Parties to assist the Conference of the Parties in exercising its functions with respect to the financial mechanism of the Convention in terms of ***improving coherence and coordination in the delivery of climate change financing***, rationalization of the financial mechanism, ***mobilization of financial resources*** and measurement, reporting and verification of support provided to developing country Parties; Parties agree to further define the roles and functions of this Standing Committee;

Source: UNFCCC COP 16 *The Cancun Agreements* (Decision 1/CP.16), December 2010 [emphasis added]

We could envisage the following three-stage replenishment process, based on UNFCCC finance mechanism and GEF Trust fund replenishment procedures

⁴ *Instrument of Commitment: An instrument provided by a Donor unconditionally committing to provide funds to the IBRD, as Trustee for the Global Environment Facility, under a Replenishment Resolution.* [[Financial Intermediary Funds: Glossary](#)]

⁵ See, for example, Rutsel S. J. Martha (2015) *The Financial Obligation in International Law*, OUP: p.264.

⁶ Note that the question as to which funds are to be involved is independent of the topic of this Discussion Note. However, what can be said for practical reasons is that the GEF Trust Fund would not be part of such a Paris Replenishment process, as it would not be realistic to separate out the GEF climate change focal area for this purpose.

Stage I: Principal Reviews and Guidance

Each of the funds serving the FM undergoes an independent performance review (akin to the [Overall Performance Studies](#) of the GEF), which is to feed into the periodic Review of the FM under the aegis of the Standing Committee on Finance (SCF)

The outcome of this Review will be the basis for Principal Guidance to these funds for the next replenishment period, drafted by the SCF.

Stage II: Establishing the Paris Replenishment Envelopes

Given that both the benchmark replenishments use programming scenarios as a basis for determining the replenishment envelopes, it stands to reason that joint replenishment envelopes should be based on programming scenarios for the different funds involved.

One advantage of jointly replenishing all the funds of the FM would be the possibility of introducing a screening and coordinating phase for the scenarios put forward by the individual funds, with regards to their coherence and complementarity. We believe that, given its remit (see Box 1), this could and should be done under the aegis of the Standing Committee on Finance (SCF). Such a ‘preventative *ex ante* approach’ to incoherencies and non-complementarities would, we believe, be more effective than the current remedial *ex post* exercises carried out through the provision of COP guidance drafted by the SCF.

As it happens, our two benchmark replenishment processes differ considerably in how the replenishment envelopes are agreed on (see Appendix for more details). In the case of the MF, the Montreal Protocol MOP takes the decision. For the GEF the envelope is, in principle, to be jointly determined by the COP and the GEF Council. In practice, the envelope is decided by the participants of a series of replenishment meetings convened by the GEF Secretariat and Trustee.

We do not believe it would be politically possible, or for that matter practicable, to choose either benchmark procedure as currently practised. For one, given that political sensitivities have not drastically changed since the GEF was designated an Operating Entity of the FM, the MF option of having the COP decide the envelope is unlikely to fly. At the same time, it would not be good governance practice for the Trustee/Secretariat of one of the funds in question to initiate such a process, as this would clearly involve a conflict of interests. What would be needed is an independent convenor, and we believe that this could again be done by the SCF, as part of its remit ‘to assist the Conference of the Parties in exercising its functions with respect to the financial mechanism of the Convention in terms of mobilization of financial resources’ (see Box 1).

Stage III: Pledging Rounds

Again, there is a considerable difference between the two benchmark replenishment processes with respect to the manner of determining individual contributions. While a rule-based sharing of the burden – following the MF replenishment model – would arguably be more efficient (once the rule is agreed), it is unlikely to be politically acceptable. This is why the contributions to the Paris Replenishments would probably be determined under a hybrid bottom-up and programming needs-based model, similar to the GEF model, in the context of the above-mentioned replenishment meetings convened by the SCF, with the aim of soliciting pledges and ‘instruments of commitment’ sufficient to reach the target envelope established in Stage II.

Way Forward

Needless to say, these ideas on how a Paris Replenishment Cycle could work in practice are still sketchy and would need to be elaborated during the envisaged Paris work programme. But we believe that these purely technical issues should be easily resolved, given the existing considerable experience with replenishment processes, and we hope that this initial procedural sketch will suffice for Parties to consider the establishment of such a Paris Replenishment Cycle as the key finance outcome in the Paris Agreement.

Appendix: Replenishments

The Global Environment Facility

The Global Environment Facility (GEF) was set up in 1991 as a joint pilot project by the World Bank, UNDP, and UNEP. In 1992, as part of the Interim Arrangements of the Convention (Art. 21), the GEF was chosen to operate the Financial Mechanism of the Convention on an interim basis. In 1998, at [COP 4](#), the restructured GEF was designated as ‘an entity entrusted with the operation of the Financial Mechanism’.

Resources for the GEF Trust Fund are replenished every four years when countries that wish to contribute to the GEF Trust Fund (referred to as ‘replenishment participants’) pledge resources through a process called ‘GEF Replenishment’.

Determining the Envelope

In Principle

The Convention requires the COP to *agree upon arrangements for determining ‘in a predictable and identifiable manner of the amount of funding necessary and available for the implementation of this Convention and the conditions under which that amount shall be periodically reviewed.’*⁷ Further to this, developing countries ‘sought, in particular, that the COP (rather than the GEF or donors) should assess the amount needed by developing countries to implement their Convention commitments.’⁸ This move was resisted by some GEF contributors,⁹ and a compromise was reached in the MOU between the COP and the GEF according to which *the COP and the [GEF] Council shall jointly determine the aggregate GEF funding requirements for the purpose of the Convention.*

The procedures for such a joint determination are further defined in an [Annex to the MOU](#) according to which the COP was to ‘*make an assessment of the amount of funds that are necessary to assist developing countries, in accordance with the guidance provided by the COP, in fulfilling their commitments under the Convention over the next GEF replenishment cycle, taking into account:*

- (a) *The amount of funds necessary to meet the agreed full costs ... to prepare their national communications ... ;*
- (b) *Financial resources needed by the developing country Parties to meet the agreed full incremental costs of implementing measures that are covered by Article 4.1 of the Convention [‘**Commitments applicable to all**’] and that are agreed between a developing country Party and the international entity or entities referred to in Article 11 of the Convention;*
- (c) *Information communicated to the COP from the GEF on the number of eligible programmes and projects that were submitted to the GEF, the number that were approved for funding, and **the number that were turned down owing to lack of resources;***
- (d) ***Other sources of funding** available for the implementation of the Convention.’*

⁷ Art 11.3.d.

⁸ (Yamin and Depledge, 2004, p.267).

⁹ (Yamin and Depledge, 2004, *ibid.*).

In Practice

In practice – see the [Draft Summary of Negotiations: Sixth Replenishment of the GEF Trust Fund](#) – the Trustee and the GEF Secretariat initiate the replenishment process by circulating a discussion note to prospective participants regarding participation, proposed timetable, and core replenishment topics.

Following an open invitation, participants in the first meeting agree on the preliminary schedule of subsequent replenishment meetings and on the overall work plan for such discussions, as well as on the **arrangements for participation** in the replenishment discussions. It was decided that the meetings would benefit from the **participation of non-donor recipient country representatives** – one representative for each of the four regional groupings (Africa, Asia, Eastern Europe, and Latin America and the Caribbean) – as full members of the process. Participants also agreed that **two NGO representatives** would participate in an observer capacity.

It was agreed that the replenishment discussions should include the following subjects **regarding the Sixth Replenishment Phase**:

- (i) strategic positioning;
- (ii) programming of resources;
- (iii) policy recommendations; and
- (iv) financial arrangements.

In reviewing the programming of resources, participants agreed to the **indicative distribution of resources among the GEF focal areas**, corporate programmes, and other activities.

To support the adopted programming approach, participants adopted a set of **policy recommendations** including: a package of updates to the STAR allocation methodology (providing an appropriate framework for meeting the objective of allocating an increased share of resources to lower-income recipient countries and ambitions for seeking higher levels of co-financing), project cycle enhancements, further work on gender mainstreaming, engagement with the private sector, strengthening results-based management and knowledge management, strengthening country and civil society engagement, and expanded use of non-grant instruments while maintaining the grant-based character of the GEF.

The **financing framework**, based on a number of scenarios provided by the GEF Secretariat, was agreed over the course of the replenishment meetings, resulting in the determination of an **aggregate replenishment level** for programming. **Individual pledges** were inscribed in a Draft World Bank Resolution, to be considered by the GEF Council and submitted to the World Bank for adoption by the World Bank Executive Directors.

All contributing participants should make their best efforts to deposit their **Instruments of Commitment** or **Qualified Instruments of Commitment** by a certain date.

Participants agreed that **contributions made without qualification** shall be paid in four equal instalments by 30 November of each replenishment year, as set out in the replenishment programme. Participants further agreed that Contributing Participants depositing Qualified Instruments of Commitment shall use their **best efforts to unqualify sufficient amounts** of their contributions to pay their instalment amounts by 30 November of each replenishment year.

Participants agreed to adjust the **minimum amount required to participate in subsequent replenishment negotiations** in the course of the next replenishment negotiations.

The Multilateral Fund for the Implementation of the Montreal Protocol

The [2012-2014 replenishment](#)

The Twenty-Second Meeting of the Parties decided:

1. To request the **Technology and Economic Assessment Panel** to prepare a report ... to enable the Twenty-Third Meeting of the Parties to take a decision on the appropriate level of the 2012–2014 replenishment of the Multilateral Fund;
2. ... the Panel should take into account, among other things:

- All control measures and relevant decisions agreed upon by the parties to the Montreal Protocol and the Executive Committee, in particular those related to the special needs of low volume and very-low-volume-consuming countries, and decisions agreed upon by the Twenty Second Meeting of the Parties and the Executive Committee ... insofar as those decisions will necessitate expenditure by the Multilateral Fund during the period 2012–2014;
 - The need to allocate resources to enable all parties operating under paragraph 1 of Article 5 of the Montreal Protocol to maintain compliance [with the relevant articles] of the Protocol;
 - Rules and guidelines agreed upon by the Executive Committee ... for determining eligibility for the funding of investment projects, non investment projects, including institutional strengthening, measures to combat illegal trade and sectoral or national phase-out plans, ... ;
 - The impact that the international market, ozone-depleting substance control measures and country phase-out activities are likely to have on the supply of and demand for ozone-depleting substances, the corresponding effects on the price of ozone-depleting substances and the resulting incremental costs of investment projects during the period under review;
3. That, in preparing the report referred to above, the Panel should consult widely all relevant persons and institutions and other relevant sources of information deemed useful;
 4. That the Panel shall strive to complete the report referred to above in time to enable it to be distributed to all parties two months before the thirty-first meeting of the Open Ended Working Group;
 5. That the Panel should provide *indicative figures* for the periods 2015–2017 and 2018 – 2020 to support a stable and sufficient level of funding, on the understanding that those figures will be updated in subsequent replenishment studies.