



SP/EB.8/2.Add.1\_  
SP/EB.Intersessional.1/4  
7 December 2022

English only

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## **REPORT OF THE INTERSESSIONAL MEETING OF THE EXECUTIVE BOARD OF THE SPECIAL PROGRAMME**

### **ITEM 1. OPENING OF THE MEETING**

1. The intersessional meeting of the Executive Board of the Special Programme to support institutional strengthening at the national level for the implementation of the Basel, Rotterdam and Stockholm (BRS) Conventions, the Minamata Convention and the Strategic Approach to International Chemicals Management (SAICM) was opened by the co-chair, Ms Kay William (United Kingdom), at 13:00 (CEST) on 5 December 2022. Ms Williams welcomed the participants and invited members and alternates participating in the Executive Board meeting for the first time to introduce themselves. She then noted that the meeting was an intersessional meeting and was closed to observers, but that a summary of the meeting would be circulated later for the purposes of transparency.
2. The meeting was attended by members and/or alternates from all Executive Board constituencies and represented quorum for opening of the meeting, in accordance with Rule 17 of the Rules of Procedure for the Executive Board of the Special Programme.

### **ITEM 2. ADOPTION OF AGENDA AND ORGANIZATION OF WORK**

3. The co-chair invited the Board members to consider and adopt the provisional agenda and proposed organization of work as set out in documents SP/EB/Intersessional.1/1 and SP/EB/ Intersessional.1/Add.1 respectively. The agenda and organization of work were adopted as presented.

### **ITEM 3. USE OF THE OECD DAC LIST OF ODA RECIPIENTS AS THE BASIS FOR DETERMINING WHETHER A COUNTRY IS A 'DEVELOPING COUNTRY' ELIGIBLE FOR FUNDING UNDER THE SPECIAL PROGRAMME TERMS OF REFERENCE**

4. The co-chair introduced the agenda item, with reference to the meeting documents that had been provided. She reminded the Executive Board that it was not necessary to take a decision at this meeting, which was intended to allow for frank and open discussion to promote better understanding of the issues and concerns surrounding the agenda item. The matter would come up for further discussion and an eventual decision at the eighth meeting of the Executive Board scheduled for February 2023, in the context of the preparations for the launch of the seventh round of funding. The co-chair then requested the Secretariat to make a brief presentation on the agenda item.
5. The Secretariat started by reminding the Board members of the context for the discussion:
  - a. The issue had arisen in the context of the extension of duration of the Special Programme for an additional period of 5 years, which was decided upon in para 16 of UNEA resolution 5/7. Paragraph 10 of that resolution encouraged the Executive Board "to review the procedures for application for funding, in light of the needs and challenges expressed by developing countries, including those related to operating costs with a view of promoting an effective and efficient application of the eligibility criteria in line with the terms of reference

of the Special Programme without jeopardizing the ability of the special programme to receive funding from existing sources.”

b. Paragraph 6 of the Terms of Reference of the Special Programme specified that “Support from the Special Programme will be available for developing countries, taking into account the special needs of least developed countries and small island developing States, and for countries with economies in transition, with priority given to those with least capacity”.

c. The OECD DAC list of ODA recipients had been adopted by the Executive Board at its fifth meeting as the basis for eligibility for funding under the Special Programme. Countries that were not on this list were not considered to be eligible for funding. To date four applications had been rejected on this basis, namely Barbados (2nd round, 2017), Chile (2nd round 2017), Uruguay (3rd round 2018) and Seychelles (4th round 2020).

d. The second aspect of paragraph 10 of UNEA resolution 5/7 concerned the cap on administrative or operational costs. Under the Special Programme guidance and guidelines for the applications, in line with the Board’s decision at its second meeting, in duly justified circumstances, a maximum five per cent of the requested funds could be allowed for operating costs, notably if a project implementing organization was tasked with project management. In most cases projects were implemented by the applicant governments directly, but governments could decide to use an implementing entity, whose operating costs should be covered by this five percent. While not an eligibility issue in itself, the proposal to use an implementing entity could be taken into account by the Executive Board when assessing the country ownership of a project.

e. At its seventh meeting, held from 28 March to 1 April 2022, the Executive Board had considered the question of eligibility for funding and requested the Secretariat to arrange this intersessional meeting and to provide the meeting documentation to inform the Board’s discussions.

6. The Secretariat then briefly outlined the contents of the meeting documents, which comprised:

a. Document SP/EB.Intersessional.1/2, which updated the information provided to the fifth meeting of the Executive Board on country classification and contained a compilation of a comparative table of classification. The document set out an opinion from the office of UNEP’s legal advisor on paragraph 6 of the Special Programme Terms of Reference and the use of the OECD DAC list of ODA recipients as the basis for determining eligibility for funding and for membership of the Executive Board. It then looked at country classification in the United Nations, focusing on the statistical annex to the United Nations World Economic Situation and Prospects (UN WESP) report, and outlined approaches adopted by the OECD, World Bank, UNDP and IMF as well as the Global Environment Facility, the Basel, Rotterdam and Stockholm Conventions, the Minamata Convention, the Strategic Approach to International Chemicals Management and the Multilateral Fund under the Montreal Protocol; and

b. Document SP/EB.Intersessional.1/3, which collected and collated the views expressed by members of the Executive Board on the use of the OECD DAC list of ODA recipients as a basis for eligibility and the possible impact, if any, of a change.

7. The Secretariat highlighted the legal opinion referred to in document SP/EB.Intersessional.1/2, which indicated that the formulation of paragraph 6 of the Terms of Reference indicated that developed countries are excluded from eligibility for funding. Noting the absence of a definition of the term ‘developing country’ in the United Nations, the opinion referred to the UN WESP report, which contained tables of developing economies, developed economies and economies in transition as well as least developed countries, small island developing states and landlocked developing countries, among others. The opinion stated that while the UN could use a list from another organisation such as the OECD DAC ODA list as a reference point, it should not be binding on decision making because it came from a body external to the UN and could therefore be disputed by some member states. Any list used by the UN to determine eligibility for funding under the Special Programme or eligibility to be a member of the Executive Board must include all developing countries and countries with economies in transition, which could include Landlocked Developing Countries (LLDCs), Least Developed

Countries (LDCs), and Small Island Developing States (SIDS). Graduation from being a ‘developing economy’ did not automatically mean a country was a ‘developed country’ and so small island developing states that had recently graduated from the OECD DAC ODA list should still be regarded as ‘developing countries’ because they remained on the list of small island developing states and were not developed countries.

8. The Secretariat informed the Executive Board that, should it decide to move from the OECD DAC list of ODA recipients to the UN WESP list as the basis for determining eligibility, 21 countries not appearing on the ODA list would become eligible for funding under the Special Programme, either as developing economies or as small island developing states, namely: Antigua and Barbuda, Bahamas, Bahrain, Barbados, Brunei Darussalam, Chile, Cook Islands, Israel, Kuwait, Oman, Palau, Qatar, Republic of Korea, Russian Federation, Saudi Arabia, Seychelles, Singapore, St Kitts and Nevis, Trinidad and Tobago, UAE and Uruguay.

9. After the presentation by the Secretariat, the co-chair opened the floor for any questions for clarification to the Secretariat and any discussion.

10. In response to questions from the Executive Board, the Secretariat provided the following clarifications:

a. While most contributions to the Special Programme Trust Fund went into the common pool of funds, it was possible for the Secretariat to maintain separate channels of funding in the Special Programme Trust Fund, and in fact this arrangement was already in place for some of the donors that had specific reporting requirements or restrictions on the use of their funds.

b. If eligibility were to be broadened to include countries not on the OECD DAC list of ODA recipients, one donor had already indicated flexibility to use up to of 7% of their funds for such countries; however there would be a need for resource mobilisation from other potential donors who did not have similar constraints, to raise funds for those countries.

c. Not all countries classified as small island developing states were on the OECD DAC list of ODA recipients. In addition, not all of these countries were listed as ‘developing economies’ in the UN WESP annex; however, all small island developing states were listed as such in a separate table in the statistical annex to the UN WESP report. If the UN WESP list were to be used in the future to determine eligibility for funding, a number of the tables provided in the document would be referenced in line with the legal opinion: tables A, B and C setting out developed economies, economies in transition and developing economies respectively; table F setting out least developed countries; table H setting out small island developing states and table I, setting out landlocked developing countries.

d. While the legal opinion did not expressly prohibit the use of a list generated by a source outside of the UN as a reference point, it noted that it would not be advisable to make that list binding upon decision-making as it came from a body external to the United Nations.

e. With respect to the cap on operational costs, the Secretariat gave some examples of approved projects where an implementing entity had been used and undertook to provide relevant information in the context of the discussion of the applications submitted under the sixth round of funding, at the eighth meeting of the Board in February 2023.

11. During the Executive Board’s discussion of the issue the following concerns were expressed:

a. Continuing to use the OECD DAC list of ODA recipients as the basis for eligibility for funding under the Special Programme would exclude several countries in the GRULAC region in particular from receiving funding. All of these countries had difficulties implementing the conventions with their own resources, and support to all countries in the region was necessary to ensure implementation of the conventions.

b. Some donor countries had strict requirements for the use of their funds and worked within strict parameters, including some that were strictly bound by the eligibility requirements under the OECD for official development assistance. Moving away from the OECD DAC list of ODA recipients as the basis for determining

eligibility under the Special Programme would mean that there would need to be strict follow-up from the Secretariat to ensure that these donors' funds went only to countries on the OECD DAC list. If this could not be assured, these countries would likely not be able to continue funding the Special Programme.

c. The special situation of small island developing states was noted, with reference to the SAMOA pathway, which aimed to address the unique challenges faced by the small island developing states to support their development. One Board member stated that regardless of the list used to determine eligibility under the Special Programme, all small island developing states should be included as recipient countries even if they were not on that list, given their specific circumstances and vulnerability.

d. One donor Board member confirmed that while they considered the OECD DAC list to be an appropriate basis to identify countries that could be supported through the Special Programme, they had some flexibility, in that up to seven percent of their contribution could be used for countries that were not on the OECD DAC list of ODA recipients. If the funds could be managed separately as the Secretariat had indicated, this could help them to observe their legal requirements with regards to the support granted.

e. One concern raised was that moving away from the OECD DAC list could jeopardise the contributions to the Special Programme, which would be in contravention of the UNEA request expressed in paragraph 10 of resolution 5/7. It would need to be clear, if a change of eligibility criteria were to be made, that all current donors would still be able to contribute. It was necessary to maintain and ideally increase the current level of contributions, otherwise the effectiveness of the Special Programme could be weakened.

f. It was noted that some countries listed as developing economies on the UN WESP list had GDP per capita higher than some donor countries, and that the OECD list of ODA recipients was itself based on the World Bank classification of countries.

g. It was also important to ensure that support from the Special Programme went to those most in need, in line with the wording of paragraph 6 of the Terms of Reference. Broadening the list of eligible countries to include countries with higher GDP per capita could potentially limit support to those that most lack adequate resources. However, even if the eligibility list were to be broadened, that did not mean that those countries would be granted funding. Funding decisions would need to take into account the pool of available funding, which would likely be limited for countries that were not on the OECD DAC list of ODA recipients, given the constraints on the use of funds provided by some of the existing donors. In addition, funding decisions would need to take into account not only the quality of the applications but, importantly, the relative needs and capacities of the applicant countries, with those in greater need (such as the least developed countries and small island developing states) being granted priority. Criteria would need to be identified to make these decisions; the information provided in the comparative table prepared by the Secretariat could be used to inform some of these criteria.

h. One Board member expressed the view that, rather than preventing countries from applying for funding, it would be better to make it clear in the call for applications that the applications would be prioritised according to the needs and capacities of the applicants, in line with paragraph 6 of the Terms of Reference. Countries could then themselves take the decision not to apply if they understood that the chance of getting funding was lower. It was noted that expectations would need to be well managed through clear and effective communication, otherwise applicants could become frustrated.

i. The possibility of using a list other than the OECD DAC list or the World Bank list was raised. The Secretariat referred again to the legal opinion's viewpoint that a United Nations list should be used to inform decision-making as the Special Programme is a UNEP mechanism.

12. The co-chair, after checking that there were no more requests for the floor, repeated that it was not required to take a decision at this meeting, since the discussion would continue in February 2023. She noted in summary that a number of Board members were cautious about a decision to move away from the OECD DAC list at this time, although they were willing to discuss the matter. She also noted the importance of understanding that the concerns arose primarily from constraints on official development assistance funding, which affected a

number of Special Programme donors, and the potential impact of such a change on future funding from those existing donors. She requested the Secretariat to consider how such a change might be communicated to potential applicants without raising unreasonable expectations, taking into account funds likely to be available and the prioritisation required by paragraph 6 of the Terms of Reference.

#### **ITEM 4. CLOSURE OF THE MEETING**

13. The co-chair concluded by thanking the members of the Executive Board for their engagement in the meeting and exchange of views. She noted again that the matter would be discussed in February 2023 in the context of the preparations for the seventh round of funding, at which time a decision would need to be taken by the Executive Board.
14. The meeting was closed at 3pm on Monday 5 December 2022.
15. In line with established practice, a draft report was circulated online among the members of the Executive Board for their comments over a period of two weeks. The Secretariat made the necessary amendments in order to finalize the present report.

**ANNEX I  
LIST OF PARTICIPANTS**

**EXECUTIVE BOARD MEMBERS – RECIPIENT COUNTRIES**

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**SMALL ISLAND DEVELOPING STATES**

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