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Meeting of the Board

16 – 19 March 2021

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Provisional agenda item 9(d)

GCF/B.28/13

3 March 2021

Outcome of Co-Chairs consultations: Guidelines on decisions without a Board meeting

Summary

This document proposes for the Board's consideration (i) guidelines to determine in which cases decisions without a Board meeting may be requested, (ii) guidance with respect to the implementation of paragraph 43 of the Rules of Procedure of the Board and other related matters.

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I. Introduction

1.1 Background

1. Paragraph 41 of the Rule of Procedure of the Board provides that decisions without a Board meeting may occur on an extraordinary basis when in the judgment of both Co-Chairs, a decision must be taken by the Board that should not be postponed to the next Board meeting.
2. In exercising such judgment, the Co-Chairs should be guided by the guidelines referred to in paragraph 42 of the Rule of Procedure (a proposal for which is set out herein) and, prior to the adoption of such guidelines, the Co-Chairs will determine on a case-by-case basis which decisions may be requested without a Board meeting.
3. To date, decisions approved without a Board meeting have typically, though not exclusively, related to procedural or time-sensitive matters. These include appointment of Board members or alternate members to committees, panels or groups of the Board, appointment of external members to panels and groups of the Board, accreditation of observer organizations and extensions of time (e.g. for application of procurement guidelines, or for the fulfilment of conditions for entering into funded activity agreements in respect of approved funding proposals).¹ Notwithstanding this, there is nothing in the Rule of Procedure which prevents the Board from authorizing, in advance, other decisions to be issued for approval without a Board meeting. In fact, the Board has expressly authorized this previously.²

1.2 Current status of Co-Chairs consultations

4. Prior to the twenty-second meeting of the Board, a draft of this document was shared with Board members and alternate members of the Board for review and comment between 17 December 2018 and 23 January 2019. The draft circulated was based on the document that was presented to the twenty-first meeting of the Board.³ Between the twenty-second and twenty-third meetings of the Board, the Co-Chairs implemented a number of changes to process of transmitting decisions without a Board meeting. These changes took account of the views expressed by Board members during the consultations and also during the Board meeting. The changes to the Board transmittal notice include:
 - (a) An explanation from the Co-Chairs as to why a decision is required that cannot be deferred to the next Board meeting, including where appropriate a formal request from a Chair of a Board committee, panel or Group;
 - (b) Confirmation in accordance with paragraph 41 of the Rules of Procedure as to the period prescribed for replies;
 - (c) Confirming and encouraging alternate members to engage with the Board members if they have comments on the proposed draft decision;

¹ Substantive decisions taken without a Board meeting are limited, but have included, among others, the initial analysis of options to minimize the effects of currency fluctuations on the commitment authority of the GCF (B.BM-2021/03); the consideration of accreditation proposals (B.BM-2020/05) the policy on the protection of whistleblowers and witnesses (B.BM-2018/21); the performance reviews of the members of the accreditation panel (B.BM-2018/02), adoption of the revised terms of reference for the independent redress mechanism (B.BM-2017/10), 2017 work plan and supplementary budget for the independent evaluation unit (B.BM-2017/09) and administrative guidelines on the budget and accounting system, and the internal control framework and internal audit standards (B.BM-2015/05 and B.BM-2015/06).

² See decision B.13/29, paragraph (f), on accreditation master agreements.

³ Document GCF/B.21/23.

- (d) Confirmation, in accordance with paragraph 43, of the process the Co-Chairs will following in the case of replies and objections; and
 - (e) Confirmation, in accordance with paragraph 44 of the Rules of Procedure, that a copy of such proposal shall be provided to the active observers for their information, unless otherwise determined by the Board.
5. In light of the discussions and the progress made at the twenty-first and twenty-second meetings of the Board, and further to comments received from Board members during the recent consultations, the 2019 Co-Chairs have revised this document to reflect such discussions and comments, and have presented it for consideration by the Board at B23. The discussion at B23 has shown that this document was close to consensus, but the Board did not take a decision on this item then.
6. The 2020 Co-Chairs have then supported further progress on this proposal by conducting a written consultation on this document, based on comments raised by Board members at B23.

1.3 Proposal by the Co-Chairs

7. In light of the discussions and the progress since the twenty-first meeting of the Board, and further to comments received from Board members during the recent consultations, the 2021 Co-Chairs have revised this document to reflect such discussions and comments, and propose that the Board:
- (a) Adopts the guidelines to determine in which cases decisions without a Board meeting may be requested, as set out in annex II; and
 - (b) Adopts the guidance in respect of the implementation of paragraph 43 of the Rule of Procedure and in respect of the circulation of proposed decisions and comments received, as set out in annex III.
8. The Co-Chairs note that this decision is without prejudice to the proposal to be developed pursuant to decision B.18/06, paragraph (c)(ii), and the outcome of the review mandated by decision B.18/06, paragraph (b), on the update of the Simplified Approval Process (SAP).

II. Recommended action by the Board

9. It is proposed that the Board adopt the draft decision set out in annex I.

Annex I: Draft decision of the Board

The Board, having considered document GCF/B.28/13 titled “Outcome of Co-Chairs consultations: Guidelines on decisions without a Board meeting”:

- (a) *Adopts* the guidelines to determine in which cases decisions without a Board meeting may be requested as set out in annex II;
- (b) *Also adopts* the guidance in respect of the implementation of paragraph 43 of the Rules of Procedure of the Board and in respect of other related matters as set out in annex III; and
- (c) *Affirms* that in line with paragraph 10 of the Governing Instrument, the Alternate Board member is entitled to participate in the process of decisions without a Board meeting only through the Board member, without the right to vote, unless they are serving as the member. If there is no Board member appointed to the relevant seat, the Alternate Board member will serve as the member.

Annex II: Guidelines to determine in which cases decisions without a Board meeting may be requested

1. Decisions without a Board meeting may occur on an extraordinary basis when in the judgment of both Co-Chairs a decision must be taken by the Board and not postponed to the next meeting of the Board. Subject to paragraphs 41-44 of the Rule of Procedure of the Board, the Secretariat, with the approval of the Co-Chairs, may transmit⁴ a decision for approval without a Board meeting in the following cases:
 - (a) The appointment of Board members and/or alternate members to seats on committees, panels and groups established by the Board;
 - (b) The appointment of external members to seats on panels and groups established by the Board;
 - (c) The accreditation of observer organizations;
 - (d) Matters relating to the implementation of approved funding proposals, as provided for in the Policy on restructuring and cancellation, including where a decision is required to prevent undue delay in the commencement or continuation of the implementation of the relevant funded activity;
 - (e) Pursuant to a Board decision or Board-approved policy which expressly envisages that a specific matter may be issued for a decision without a Board meeting; and
 - (f) Such other matters on which, in the judgement of the Co-Chairs, a decision must not be postponed to the next meeting of the Board.

⁴ Transmission to all Board members and Alternate Board members shall be deemed to constitute achieving quorum in accordance with paragraph 41 of the Rules of Procedure.

Annex III: Guidance in respect of the implementation of paragraph 43 of the Rules of Procedure of the Board and other related matters

1. In accordance with paragraph 41 of the Rules of Procedure, the Secretariat, with the approval of the Co-Chairs, shall transmit to all Board members and alternate members a proposed decision with the invitation to approve the decision on a non-objection basis, within a prescribed period (generally 21 days but in urgent cases no less than one week).
2. In accordance with paragraph 43 of the Rules of Procedure, at the expiration of the period prescribed for replies, the decision will be deemed approved unless there is an objection. If an objection has been received, the Co-Chairs will work through the objection with the Board member directly in accordance with this Guidance. If the objecting Board member upholds his/her objection following discussion with the Co-Chairs, and if no other way forward has been identified, the proposed decision will be considered by the Board at the following meeting. The Secretariat shall circulate all written comments and objections to all Board members and alternate members and notify all the Board members and alternate members of the action taken pursuant to this paragraph.

I. Identifying “objections”

3. Decisions without a Board meeting are approved on a non-objection basis. Board members have two options when responding to a proposed decision within the period prescribed for replies:
 - (a) To raise an objection; or
 - (b) To request clarification.
4. The Secretariat shall not to consider as an ‘objection’ any communication from a Board member in connection with a proposed decision unless it is clearly marked as an ‘objection’.
5. In case of a request for clarification, the Secretariat, in consultation with the Co-Chairs and the Independent Units, as appropriate, shall develop and provide a response, which shall be provided to all Board members and Alternate members. However, if the request for clarification cannot be addressed to the satisfaction of the Board member before the end of the prescribed period for replies, the Board Member should inform the Secretariat if said request shall be treated as an objection; otherwise, the request shall not be considered an objection.

II. “Working through” an objection with the Board member “directly”

6. The Co-Chairs, with the support of the Secretariat and the Independent Units, as appropriate, will work through the objection(s) with the relevant Board member(s) as soon as possible. This may include, discussions with the relevant Board member(s) to allow:
 - (a) The Board member(s) to elaborate their concerns with the proposed decision; and/or
 - (b) The Co-Chairs, with the support of the Secretariat and the Independent Units, as appropriate, to clarify the purpose of the proposed decision, and, as appropriate, allay any concerns, misapprehensions and/or misunderstandings; and/or
 - (c) The Co-Chairs to invite relevant Board member(s) to engage with other Board member(s) bilaterally or within a small group, in an informal manner, as appropriate.

7. The Co-Chairs may work through the objection with the Board member(s), or they may authorise the Secretariat to do so on their behalf and in accordance with their guidance.
8. After the Co-Chairs have concluded their discussions as part of working through the objections with the Board member(s) concerned, and irrespective of whether the working through process has been concluded before or after the prescribed period, the following scenarios may arise:
 - (a) The Board member(s) lift(s) their objection(s), in which case the proposed decision shall be deemed approved, subject to the exceptions in paragraph 12 below where objections are lifted after the prescribed period for replies;
 - (b) The Board member(s) uphold(s) their objection(s) and no amendment to the decision text can satisfy the relevant Board member(s), in which case the proposed decision will be considered by the Board at its next meeting; or
 - (c) The Co-Chairs and/or the relevant Board member(s) suggest(s) amendment(s) to the proposed decision, in which case the Co-Chairs may decide
 - (i) either to issue a revised decision between Board meetings, in accordance with paragraph 41 of the Rules of Procedure, in which case such new decision shall be proposed promptly for approval; or
 - (ii) That the suggested amendments merit discussion in a Board meeting, in which case the objection shall be deemed upheld and the proposed decision will be considered by the Board at its following meeting.
9. Decisions proposed for approval without a Board meeting shall not be considered approved during the period in which the Co-Chairs are working through the objection with the Board member(s) concerned, even if such period extends beyond the expiry of the prescribed period.
10. The Co-Chairs will provide a written report to the Board detailing their discussions with the objecting Board member(s). The Secretariat shall circulate all written comments and objections to Board members and alternate members and notify all the Board members and alternate members of the action taken as outlined in the Co-Chairs written report.
11. At the end of the no-objection period, the Secretariat shall inform the Board on the status of the decision. This information shall be published on the GCF website, subject to the Information Disclosure Policy.

III. Consequence of lifting an objection after the prescribed period

12. If an objection is lifted after the prescribed period has expired (and no other objections remain in place), then the relevant decision proposed for approval shall be deemed approved unless:
 - (a) The relevant Board member lifted the objection on the basis that a new decision which addresses or resolves the original objection will be proposed by the Co-Chairs to the Board, in accordance with paragraph 41 of the Rules of Procedure, in which case, such new decision shall be proposed promptly for approval; or
 - (b) The originally proposed decision, if approved on the date on which the objection is lifted, would
 - (i) Adversely affect third parties in a way which it would not have done had it been approved at the end of the prescribed period for replies;

- (ii) No longer be appropriate in light of facts which have come to light, or events which have occurred, in the period between the expiration of the prescribed period for replies and the date on which the objection is lifted; or
- (iii) Reinstate or otherwise approve or reapprove a funding proposal which by such date has lapsed.

13. If any of paragraphs 12(b)(i) to 12(b)(iii) above apply, the Co-Chairs shall determine, taking into account all relevant facts and circumstances, whether a new decision should be issued for approval without a Board meeting, or whether the matter should be addressed at the following Board meeting.

IV. Active observers and transparency

14. Decisions proposed for approval without a Board meeting shall be provided to the active observers for their information and be published on the GCF website, unless otherwise provided by the Board, subject to the Information Disclosure Policy (IDP), at the same time that they are transmitted to the Board. Any comments received from active observers shall be promptly circulated to all Board members and Alternate Board members.

15. If a decision without a Board meeting is proposed by the Co-Chairs on a limited distribution basis, the provisions of the IDP shall apply.

16. The document on the matter of decisions proposed without a Board meeting for consideration at the next Board meeting will include the comments, clarifications and objections received, in accordance with the IDP.

17. In accordance with paragraph 44 of the Rules of Procedure, decisions approved in-between meetings shall be recorded in the report of the following Board meeting.
