



**United Nations
Environment
Programme**

Distr.
GENERAL

UNEP/OzL.Pro/ExCom/46/43
3 June 2005

ORIGINAL: ENGLISH



EXECUTIVE COMMITTEE OF
THE MULTILATERAL FUND FOR THE
IMPLEMENTATION OF THE MONTREAL PROTOCOL
Forty-sixth Meeting
Montreal, 4-8 July 2005

PHASE-OUT AGREEMENTS: FLEXIBILITY CONDITIONS (DECISION 45/15)

For reasons of economy, this document is printed in a limited number. Delegates are kindly requested to bring their copies to the meeting and not to request additional copies.

Introduction

1. At its 45th meeting the Executive Committee discussed the definition and use of the flexibility conditions included in agreements for performance-based phase-out plans and adopted decision 45/15 as follows:

“the Executive Committee decided to request the Secretariat, in consultation with the implementing agencies, to prepare a paper for consideration at the 46th Meeting of the Executive Committee defining the meaning of major changes in the use of funding and the need to document such changes in advance in the country’s annual implementation programme.”

2. This paper examines the flexibility conditions in consumption sector projects other than the methyl bromide sector (MB agreements typically use a different form of agreement).

Background

3. From the outset, flexibility in the use of funds has been a key provision of the arrangements under which the Executive Committee supports sector or national phase-out plans in Article 5 countries. Thus, all agreements between governments and the Executive Committee for the implementation of multi-year projects other than methyl bromide agreements have contained a provision granting flexibility in the use of funding to facilitate the smoothest possible phase-out, whether or not that use of funds was contemplated in determining the amount of funding approved in principle under the agreement.

4. A text describing the flexibility provisions in sector or national phase-out plans was included in the guidelines for preparation, implementation and management of performance-based phase-out plans adopted by the Executive Committee at its 38th Meeting (decision 38/65, document UNEP/OzL.Pro/ExCom/38/57/Rev.1). It reads as follows:

“While the Funding was determined on the basis of estimates of the needs of the Country to carry out its obligations under this Agreement, the Executive Committee agrees that the Country may have the flexibility to reallocate the approved funds, or part of the funds according to the evolving circumstances to achieve the goals prescribed under this Agreement. Reallocations which are considered as major changes should be accounted for in the verification report and reviewed by the Executive Committee.”

5. The guidelines for performance-based phase-out plans also provide that “because of the different situations and needs of countries, and the impracticability of attempting to encompass every situation, the purpose of the guidelines is to provide general principles and procedures that should be followed in developing and implementing performance-based ODS phase-out plans.”

6. In the light of the indication that the guidelines should be considered as general principles, and because a significant number of agreements were approved before adoption of the guidelines, only six approved agreements use the above language to define flexibility.

7. Seventeen agreements contain a standard form of alternative wording for the flexibility clause that, while providing full flexibility to reallocate funding, requires all reallocations to be “documented in advance in a country’s Annual Implementation Programme (AIP), and endorsed by the Executive Committee prior to implementation.”

8. An additional 16 projects in the consumption sectors use neither of these standard forms of words to define flexibility. Of the 16 agreements, 10 require any reallocations of funding to be documented in AIPs. The remaining 6 agreements do not require any prior documentation of reallocations of funding.

9. Up to and including the 45th Meeting, out of a total of 39 national or sector plan agreements approved by the Executive Committee for consumption sectors other than MB, only three requests for flexibility in the application of funding approved in principle have been drawn to the attention of the Secretariat and/or submitted to the Executive Committee for consideration in the subsequent AIP. Two of the requests were associated with the China solvent sector phase-out plan; the third request was associated with the solvent sector phase-out plan for Pakistan.

10. At the 45th Meeting the Secretariat advised the Executive Committee that a review of funding reallocations *post facto* does not provide a meaningful way for the Executive Committee to exercise its discretion. There are no avenues for recourse if the Committee were to conclude that the reallocation was not acceptable.

Suggested approach

11. Decision 45/15 indicates that the Executive Committee is interested in drawing a distinction between minor and major changes to the use of funding envisaged in the sector or national phase-out plan, and/or included in the current, approved AIP. In view of the Executive Committee’s discussion, the Secretariat has based its consideration of the definition of major or minor changes on the premise that changes which are considered to be minor could be made to approved AIPs without reference to the Committee (as per the definition in the guidelines), however changes that are major in nature would need to be documented first in the AIP for the subsequent year. They would therefore be scrutinised by the Committee when it considered the AIP, prior to implementation.

12. The approach below incorporates this principle and a suggested definition of the boundaries of major and minor changes in the use of funding. It includes an arrangement for consultations between the Secretariat and relevant bilateral or implementing agencies when there is doubt as to whether specific proposed changes would be considered major or minor. The approach is as follows:

- Consistent with the flexibility provisions in the relevant agreement, any AIP prepared and submitted to the Executive Committee for approval can include changes to the scope and nature of the activities foreshadowed in the project document, on which approval-in-principle of the overall phase-out plan was based.

- It is expected that each AIP will be implemented as approved and will achieve as a minimum the phase out proposed in the project document and the agreement, where relevant.
- Minor changes to a project or an AIP may be incorporated as implementation proceeds during the year and reported on in the annual report on implementation of the AIP.
- Examples of minor changes include:
 - adjustments to the numbers of equipment items to be purchased (for example, plus or minus 20 percent of the numbers of recovery and recycling machines in an AIP)
 - changes to the size or content of training programmes included in the current approved AIP
 - financial adjustments between the levels of funding of activities in the current approved AIP (excluding transfers between agencies) provided these do not affect the overall funding level of the approved AIP.
- Proposed major changes to the scope and nature of activities foreshadowed in the project document must be referred to the Executive Committee for approval as part of the AIP for the subsequent year.
- Major changes can be defined as those presenting:
 - Issues potentially concerning the rules and policies of the Multilateral Fund
 - reductions from the planned amount of phase-out to be achieved in the year
 - changes in the annual levels of funding allocated to individual bilateral or implementing agencies
 - provision of funding for programmes or activities not included in the current endorsed AIP, or removal of an activity in the AIP, with a cost greater than 20 per cent of the total cost of the tranche.
- It is the responsibility of the bilateral or implementing agency in the first instance to identify whether a proposed change to implementation of the current approved AIP would be considered major or minor according to the criteria above:
 - if the proposal could constitute a major change, the agency should defer the proposed change pending submission and endorsement by the Executive Committee as part of the subsequent AIP.
- Where there is doubt as to the nature of a proposed change, the agency should seek the views of the Secretariat as to whether the issues raised by the proposal are such that prior consideration by the Executive Committee is required. If the Secretariat indicates that the proposed change does not raise issues that require reference to the Committee and, consistent with the above criteria, the proposal will be deemed to be a minor change and may be incorporated in the AIP currently under implementation and reported to the Executive Committee in the annual report on implementation of the AIP.

13. To implement an approach along the lines of that indicated above, it would be necessary to revise paragraph 7 of the draft agreement annexed to the guidelines for preparation, implementation and management of performance-based phase-out plans adopted by the Executive Committee at its 38th Meeting (decision 38/65) along the following lines (the revised text appears in italics):

While the Funding was determined on the basis of estimates of the needs of the Country to carry out its obligations under this Agreement, the Executive Committee agrees that the Country may have the flexibility to reallocate the approved funds, or part of the funds according to the evolving circumstances to achieve the goals prescribed under this Agreement. *Reallocations categorised as major changes must be documented in advance in the next Annual Implementation Programme and endorsed by the Executive Committee as described in sub-paragraph [...]. Reallocations not categorised as major changes may be incorporated in the approved Annual Implementation Programme under implementation at the time and reported to the Executive Committee in the report on implementation of the annual programme.*

14. No separate reference is made to verification of any major or minor changes since verification requirements already apply to the overall sector or national plan in accordance with provisions specified elsewhere in the agreement.

Co-ordination

15. As requested in decision 45/15, implementing agencies were consulted during the preparation of this paper. UNDP UNEP and UNIDO concur with the findings of this paper. The World Bank advised that it agrees with the findings, but confirmation of the World Bank's comments had not been received at the time the paper was finalised.

Conclusions and recommendations

16. The Executive Committee might consider:

- (a) adopting the approach outlined in paragraph 12 above for delineation and management of major and minor changes to the allocation of funding in future agreements governing performance-based phase-out plans, and;
- (b) agreeing to amend the guidelines for preparation, implementation and management of performance-based phase-out plans adopted by the Executive Committee at its 38th Meeting (decision 38/65) by replacing part of paragraph 7 of the draft agreement (Annex II of the guidelines) with the revised wording appearing in paragraph 13 above.
