



**COUNCIL OF  
THE EUROPEAN UNION**

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**INFORMATION NOTE**

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from: General Secretariat  
to: Delegations

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Subject: 5th session of the Intergovernmental Negotiating Committee on mercury (INC5)  
(Geneva, 13-18 January 2013)  
- Compilation of statements from the European Union (and its Member States  
and Croatia)

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Delegations will find attached, for information, in the Annex a compilation of statements from the European Union (and its Member States and Croatia) as delivered during INC5.

**STATEMENTS FROM THE EUROPEAN UNION AND ITS MEMBER STATES AND CROATIA****OPENING STATEMENT**

We extend our thanks to the government of Switzerland for hosting INC-5 as well as to the government of Japan for its readiness to host the Diplomatic Conference for signature later this year.

We approach this last session of the negotiation process in a constructive spirit with the aim of finalising our negotiations on Friday. Our contacts with our negotiating partners over the last few months have left us with the feeling that this spirit is widely shared. Indeed all views are well known and the political momentum is there. Therefore, we are ready to agree a sound text that we can all stand by and we invite all Parties to these negotiations to work together for a successful outcome of INC-5.

Our thanks go to our Chairman, Mr Lugris, who made best use of the mandate given to him at INC-4 and we welcome, as the basis for our negotiations this week, the new draft text proposal, INC.5/3, that he has presented to us. Our thanks also go to the Secretariat for their hard work in the preparations for this meeting. We will propose that some aspects of the Chair's text is complemented by other papers, notably regarding the draft content of Annexes C, D and F. We will come back to this when the relevant Articles are opened for discussion in Plenary. We will also introduce a short CRP on supply and one on the preamble.

We are convinced that we all feel a sense of duty this week to deliver environmental improvements that will contribute in the long run to a better global environment and improved health for all across the world. We are resolute in our efforts to agree on a robust and ambitious Mercury Convention that really makes a difference in terms of reducing mercury pollution and human exposure to mercury. Atmospheric emissions, primary mining of mercury and ensuring that the future Convention covers the whole life cycle of mercury are clear priorities for us. The Convention also needs to contain dynamic provisions for its review and adaptation so that it is possible to address in a straightforward manner issues that may arise on the mercury agenda in the future. We are therefore also particularly interested in provisions regarding the review of the instrument and in particular its annexes.

With these general lines in mind, we are ready to start working in this fifth and last negotiating session, convinced that a successful outcome is within reach. The global community expects us to work for their health and the quality of their environment – we should not deceive them.

Thank you Mr Chairman.

## STATEMENT FROM THE EUROPEAN UNION, ITS MEMBER STATES AND CROATIA

### PREAMBLE

We see the usefulness of a balanced preamble and for a robust, concise objective. We recognise the importance of the preamble in setting the context for the Convention text. We would like to share, in a CRP, our views on what the preamble could contain, as called for at the INC Bureau meeting held in Beijing on 17/18 December (point 11 of the meeting's report). The text we propose seeks to cover the necessary points in a balanced manner.

## STATEMENT FROM THE EUROPEAN UNION

### SUPPLY AND TRADE

The EU attaches great importance to strong provisions targeting the supply aspects of the Mercury Convention. We had tabled our ideas in the form of a Conference Room Paper at INC-4.

Unfortunately the text on supply and trade now included in the Chair's proposal falls significantly short of our level of ambition. However, in the spirit of flexibility we are willing to work on the basis of this text but we will seek improvements, in particular, on two major points.

First, it is in our view indefensible that an international Convention having the ambition to resolve the global mercury issues would still allow primary mining to continue without any time limit for ceasing such activity. Furthermore, adding additional quantities of mercury to the large amounts of mercury already in circulation would clearly work against the objective of this Convention and would not be understood by the people we are seeking to protect. We also need to bear in mind that awareness of the mercury problem is not new and that mercury has been recognised as substance of global concern for over ten years. While we acknowledge that some Parties will need a transition period, we cannot accept the absence of a phase out date.

Our second point is that, whereas decommissioned chlor-alkali plants are likely to be the major secondary source of mercury over the next couple of years, the situation may well be different in ten to fifteen years' time. Should over-supply of mercury to the global market become a significant new challenge hampering the success of this Convention, we will have to be equipped with the tools to react rapidly and effectively. To this end, and without changing the level of the obligations included in the draft Convention, we propose to move chlor-alkali facilities to a new Annex on supply sources that we will be able to amend, whenever needed, to address emerging supply challenges according to the procedure laid down in Article 28.

We have made available to the Secretariat a Conference Room Paper on Supply with detailed text proposals addressing these two points.

In addition, we suggest strengthening the provisions related to trade with non-Parties. We do not propose substantial changes in the text as it stands but see a role for the Conference of the Parties to develop, in future, more detailed guidance.

Finally, we see a need for legal review, mainly in the trade paragraphs, to clarify the links with Articles 12 and 13 on storage and waste and to ensure coherence with international waste legislation.

## STATEMENT FROM THE EUROPEAN UNION

### PRODUCTS AND PROCESSES

The EU would like to extend our appreciation to all those who co-operated in a very informal but also very constructive manner in the consultations lead by Japan, Jamaica and ourselves resulting in the development of a Conference Room Paper covering Annexes C and D as well as some aspects of the Articles of this cluster. We are happy that you Chair concluded that the meeting agrees to use the draft annexes contained in this CRP as the basis for negotiation, thereby replacing the indicative lists featured in the Chair's text with the content of these annexes.

A lot of time was spent at INC-4 on drafting Articles 6 and 7 and there only remains a need to resolve some bracketed text and to proceed with minor fine tuning, which should be rather straightforward for the "Mega-Contact Group".

## STATEMENT FROM THE EUROPEAN UNION

### EXEMPTIONS

Article 8 has not been discussed to date as its format and role depends very much on the solution emerging for products and processes. We consider that the proposal from the Chair is very sensible and well-adapted to the agreed approach for Articles 6 and 7. Our understanding is that the exemptions system is similar to that existing under the Stockholm Convention in that, for a given use, a maximum of two consecutive 5-year periods for a given exemption, totalling a maximum of 10 years, would be available to parties. We see however a risk that the current wording could prolong, in an unjustified manner, the existence of exemptions. Taking the example of a use banned in 2020, under the present text, even a country acceding to the Convention very late, say, in 2030, is allowed to ask for an exemption for up to 10 years, hence until 2040, whereas all other Parties will not benefit from such exemptions after 2030. We therefore envisage proposing a backstop provision that would limit this possibility.

Finally, we do not see the need for a general exemption provision as set out in Article 8bis as Article 8 already offers significant flexibility.

## STATEMENT BY THE EUROPEAN UNION

### ASGM

Thank you Mr. Chairman,

The text of this article is well advanced with the only remaining technical issue at paragraph 5. We welcome the submission by the United States of their CRP on Paragraph 5 of Article 9, on trade in mercury for use in artisanal and small scale gold mining and processing. We believe that the trade provisions are a very important part of the Convention. In this regard, we see the US text as an improvement on the Chair's text. However, we would wish to ensure that any amendment to Paragraph 5 of this article 9 would fit appropriately within the overall structure and legal terms of the Convention, particularly in respect of Article 3.

We suggest that you refer paragraph 5 of this article to the contact group on selected technical issues so that we can address this paragraph once it has finalised its work on article 3.

## STATEMENT FROM THE EUROPEAN UNION

### AIR EMISSIONS AND RELEASES TO WATER AND LAND

For the EU, substantive and strong provisions on air emissions are a crucial element of the future Mercury Convention. We made a lot of progress at INC-4 by agreeing on a definition of "best available techniques" that contains a considerable degree of flexibility and that takes the specific concerns of Parties into account. This new definition should help us a lot in concluding on Article 10 in the next few days.

We see the Chair's text as a good starting point for the discussions. Concerning article 10, as we previously stated, we favour working on the basis of option 1 with a view to further strengthening the text. We recognise nevertheless that there are some similarities between options 1 and 2.

We note the reference to national implementation plans contained in the second bracketed option in paragraph 9 is related to the financing aspects of this Convention. That link with financing will be discussed as part of the wider negotiations this week. Consequently, we believe there is no need for the contact group on emissions and releases to duplicate such discussions. That contact group should be tasked with developing a single option for the operative provisions of Article 10.

We consider it essential to set strict requirements for new sources and recognise somewhat greater flexibility is needed for existing sources. However, a time line for implementation of measures for existing sources should be set in the Convention. We would appreciate hearing from our negotiating partners what realistic time lines could be envisaged for these sources. To facilitate the negotiations on Annex F, we suggest the use as a basis in the contact group, the tables proposed by the Co-chairs and contained in Annex I pages 4 and 5 of document INC-5/4. These thresholds will provide an easy way to allow Parties to identify the sources that are covered by the Treaty and to ensure efforts are focused on the larger sources.

Concerning releases to water and land, we believe that Article 9 on ASGM addresses, in a comprehensive manner, the most obvious source of these releases. As regards Annex G, we think that further consideration of the proposed source categories is needed to ensure that only those of major concern are covered by the provisions of Article 11. This consideration would assist in the formulation of a suitable approach to addressing releases from those sources, which might differ from the one taken for air emissions.

We believe that work on these articles should start as soon as possible and would suggest, Mr Chair, that you launch the work of this group without delay.



## STATEMENT FROM THE EUROPEAN UNION

### STORAGE, WASTE AND CONTAMINATED SITES

As we move forward with the implementation of this Convention we will accumulate globally, on a continuous basis, increasing amounts of mercury. The storage and final disposal of this mercury is likely to require cooperation between Parties and we therefore consider it important that we clearly express our commitment to address this challenge together.

Whilst we had presented at the last negotiating session some illustrative ideas based on EU experience regarding possible storage and final disposal requirements, we recognise that other options may also be feasible and that the Conference of the Parties is indeed the right place to agree on solutions that are workable in a global context.

In a spirit of flexibility and subject to resolving the small amount of bracketed text remaining in the Chair's text, the EU can broadly agree with the text of Articles 12, 13 and 14 as it stands with the exception of two words.

Article 12 paragraph 3 and Article 13 paragraph 3(a) only state that the CoP "may" adopt requirements, which falls short of expressing clearly our commitment to address this challenge in the future. We would like to see this strengthened, for example by substituting the word "may" with "shall".

In the run-up to INC-5 we have been consulting negotiation partners on the bracketed text remaining in Article 13, which we support. We however remain open to discussing in the mega-contact group possible alternative language that may be proposed by interested Parties.

When the contact group on selected technical issues has finalised its work, a detailed review by the legal group will be required given the links between these articles and other articles in the text, especially Article 3. Finally, allow me to signal that we see a need for clarification on the level of mercury content that would trigger the application of this Convention's waste provisions. This will require, at the very least, cooperation with Basel for developing the relevant guidance.

## STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES AND CROATIA

### FINANCE

Mr. Chairman

We all want an effective convention that all Parties can implement.

Implementation requires political will, finance and expertise. We believe that all Parties have responsibilities to provide these, within their capabilities. Financing should combine mainstreaming actions in national budgets and policies, industry involvement and dedicated external funding. We recognise that some countries will need financial and technical assistance to meet some of their obligations, and to undertake full implementation under the Convention.

We welcome the progress that was made during the course of the INC 4 finance discussions in identifying parties' priorities. We believe the Chair's draft text for Articles 15 and 16 reflects the various options identified at INC4 and provides a good starting basis for reaching agreement at INC 5. We will work hard to find that agreement.

All developing countries need reassurance that dedicated external finance will be available on a predictable and long-term basis. The GEF has a 20 year track record of predictable substantial funding. It also has the advantage of already being involved with mercury, as well as SAICM and International Waters which are relevant to this Convention. Their experience on POPs waste could be useful for mercury waste.

Moreover the GEF is in place and can start work as the financial mechanism as soon as the Convention comes into force. Indeed, we are pleased that GEF is already providing help which will allow countries to prepare in the interim period for entry into force. We will also have the benefit of not having to establish costly administrative structures for a new fund, as the GEF already has a highly experienced Secretariat and Governance structure funding projects right across the environmental sector. Therefore, we believe that agreement on Article 15 needs to be based on language that is compatible with using the GEF trust-fund.

As with every case where the GEF acts as the financial mechanism of a convention, the GEF instrument would require the GEF Council to take full account of guidance provided by the mercury COP in deciding on financing strategies and programmes. We welcome the work GEF continues to do to simplify its procedures and believe this will help GEF to be a user friendly instrument for mercury.

So Mr. Chairman, we look forward to your leadership in helping us all find the right text for Article 15 that will support an ambitious and effective Convention.

## STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES AND CROATIA

### INTERIM FINANCE

Mr. Chairman

We fully recognise that some countries will need help to prepare domestic legislation and build capacity so that they are in a position to ratify the Convention. We therefore support references to the need for interim finance in the draft final act. We are pleased that GEF is already providing help which will allow countries to prepare in the interim period for entry into force.

As well as support for countries we will need to keep the Secretariat in place until COP1. To this end we will need interim financing probably through the existing mercury trust fund.

## STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES AND CROATIA

### TECHNICAL ASSISTANCE

Mr. Chair, we welcome your draft for Article 16 on Technical Assistance and would be happy to see a reference to capacity building in the title.

Technical assistance will be important to all parties; none of us have all of the technical solutions we will need to eliminate all remaining mercury uses. Thus we would like paragraph one to refer generally to Parties rather than to single out developed countries as the providers of technical assistance.

#### **16 bis** **Technology Transfer**

Mr. Chair, we cannot support a separate Article on transfer of technology. We do not see the need for yet another mechanism for technology transfer. Technology certainly needs to be transferred and this will need to be promoted. However technology transfer is just one of many issues that will be assisted by the financial mechanism.

As well as our objections of principle, we have major difficulties with the proposed text of Article 16 *bis* which contains language that is not compatible with other agreements on technology transfer. While we see no need for a separate Article, elements of the alternative text to 16 *bis* could be worked into Article 16 itself.

SECTION J

**Article 18 – Information exchange**

We can generally support the amendments made by the Chair to the text resulting from the INC4 discussions. However, we believe that information on the health and safety of humans and the environment should not be regarded as confidential. As such, the lifting of the brackets in paragraph 5 is not acceptable to us and instead, the text ‘subject to the national laws of each country’ in that paragraph should be deleted.

**Article 20 - Research, development and monitoring**

We can support the amendments made to this article by the Chair to improve its consistency and clarity. We acknowledge that there is one outstanding piece of bracketed text that is dependent on the further detailed discussions within the Mega Contact Group. We look forward to engaging in the discussions within that group, and propose that, subject to agreement in that group, this final bracketed text can be dealt with by the legal group.

**Article 20bis – Health aspects**

We recognise the importance of health aspects related to the supply, use of, and exposure to, mercury. We welcome the UNEP/WHO paper on the ‘Analysis of the extent to which the provisions of the draft mercury instrument reflect the content of article 20bis on health aspects’ following our INC4 discussions and we consider this to be a useful input into our discussions on this article at INC5.

However, the text as proposed currently in document INC.5/3 appears to be inappropriate for a multilateral environmental agreement.

We will assess carefully any alternative text proposal but would like to stress, however, that we have to avoid duplication of the work of other international organisations and agreements.

**Article 21 – Implementation plans**

We are disappointed that we did not make more progress on this article at INC4 but recognise that there is a strong linkage with other elements of the draft convention text and that progress in these areas will assist in the final resolution of this article. A distinction, however, should be made between general implementation plans as currently detailed in Article 21 and which should be, in our view, discretionary, and mandatory obligations such as national goals and inventories set out in other articles such as atmospheric emissions, the national plans related to ASGM activities under article 9 and the stock inventories under article 3. We are however open to listening to the views of others on these plans.

**Article 22 – Reporting**

We welcome the progress made at INC4 on this Article. We recognise that the text will need to be reviewed when Article 21 is agreed and also to ensure that the correct references appear in paragraph 2 once the substantive articles elsewhere are finalised. We should also be mindful of the need to ensure that the detailed reporting requirements are laid out in either this article or the substantive articles.

We believe the bracketed text in paragraph 3 should be deleted as the issues of financial and technical assistance are best addressed in the context of our discussions on these matters. We look forward to engaging positively in those discussions.

**Article 23 – Effectiveness evaluations**

We support the Conference of the Parties evaluating the effectiveness of the Convention as we believe this will help develop and improve the Convention and its implementation into the future. However, we would require that the first evaluation take place earlier than proposed in the Chair’s text and would propose, ‘no later than at its third meeting’. As expressed at INC4, we do not support the inclusion of evaluation of the financial mechanism in this Article, and consider that any such discussion should take place in the context of the wider discussions on financial and technical assistance.

SECTIONS K, L, M AND N

We would like to emphasise the importance of these sections, in particular articles 24, 27 and 28, to ensure a dynamic instrument that can meet the evolving global needs to manage mercury throughout its lifecycle. We consider that we have a strong mandate to do this, both in UNEP Governing Council Decision 25/5 and in the Johannesburg Plan of Implementation on the sound management of chemicals and waste as restated in *The Future We Want* last year.

**Section K: Institutional arrangements**

**Article 24 – Conference of the Parties**

On Article 24, we can generally support this article but, in line with our views on implementation plans, we are opposed to the inclusion of the bracketed text in paragraph 5(c) bis.

**Article 25 - Secretariat**

On Article 25, we note that the majority of this article, with the exception of the references to articles 17 and 22, has been reviewed by the legal group with no amendments proposed.

We recognise the importance of a strong Secretariat in facilitating information exchange, overseeing reporting requirements, and facilitating the implementation of the provisions of the Convention. In particular, we welcome the text of paragraph 2(c) which notes the important role of the Secretariat, when requested to do so, in providing assistance to developing countries and countries with economies in transition in implementing the future Convention. However, in recognition of the fact that we have not yet discussed articles 17 and 22, we do not believe that the brackets at paragraph 2(e) can be removed at this time. That said, as our concern is only related to the need for consistency across the instrument, we are happy for this matter to be dealt with by the legal group once the relevant discussions have been completed.

In addition, and in line with paragraph 4, we recognise and support the proposal made in Annex 1 of the Chair's text that the Secretariat make provision for the exploration of enhanced cooperation and coordination with existing MEAs in the draft resolutions for the interim period.

**Section L: Settlement of disputes**

On Article 26, we can, in principle, support the text, including that of Annex J.

**Section M: Further developments of the Convention**

We believe that this section is critical to achieve our ambition for a dynamic convention that allows us to manage mercury throughout its lifecycle, now and into the future. In particular, we consider that these two articles are important in ensuring that the Convention can evolve over time to meet the changing global mercury environment.

### **Article 27 – Amendments to the Convention**

On Article 27, while we support the overall approach as set out in this Article and the provisions in paragraph 3 for agreement on amendments, we suggest that where consensus is not reached that the possibility of majority voting would be allowed. We are, therefore, happy to support removing the brackets in both paragraph 3 and also in paragraph 5. We welcome the chair's text clarifying the provisions regarding what parties are counted in determining when an amendment enters into force.

### **Article 28 – Adoption and amendment of Annexes**

On Article 28, and as stated at previous INCs, we favour an expedited procedure for the adoption of new annexes and the amendment of existing ones. We consider that this is necessary to allow the Convention to swiftly adapt to new scientific and technical developments, as well as to the evolving global environment. In an effort to support the Chair in his objective to deliver a streamlined text, we also suggest that the second part of paragraph 4 should be deleted, in view of the provisions of paragraph 3(b). We consider that paragraph 3(b) offers a sufficient safeguard for countries that are not in a position to be bound by the amendment or that require more time for adopting the implementing measures in line.

## **Section N: Final provisions**

### **Article 29 – Right to Vote & Article 30 - Signature**

On Article 29 and Article 30, we can accept the text as it stands subject to the appropriate insertions into Article 30.

### **Article 31 – Ratification, acceptance, approval or accession**

On Article 31, in relation to the remaining bracketed text in this Article, we have the following views. As noted at previous INCs, we are supportive of the concept in paragraph 4 around the instruments of ratification, acceptance, approval or accession of the Instrument. However, we would suggest that a more general text such as 'a declaration identifying legislative or other measures taken to implement this Convention' might be more appropriate and facilitative of the differing national situations.

### **Article 32 – Entry into force**

We support the majority of the text including the need for 50 ratifications for the entry into force of the instrument. However, in recognition of the discussions that are ongoing in relation to articles 15 to 17, we do not believe the brackets in paragraph 4 can be removed at this time.

### **Article 34 – Withdrawal**

We support the longer period of three years in line with the relevant precedents of the Stockholm, Rotterdam and Basel conventions. We believe it is appropriate to allow sufficient time for the instrument to operate and for Parties to gain experience in its application before withdrawals are contemplated.

### **Article 35 and 36 – Depository – Authentic Text**

We are happy to support the proposed text without amendment.



## STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES AND CROATIA

### HIGH LEVEL

We are all here to agree on a treaty that is worthy of the victims of Minamata and honours their suffering by protecting people everywhere from another such tragedy. We know what we need to do: we are here to agree to do it.

In Europe we have an expression – if you are in a hole and life is getting worse, stop digging. Here we mean exactly that. We should stop digging new mercury out of the ground and further adding to the global over-supply. So provisions on primary mercury mining must be the cornerstone of our Convention.

Second, we must reduce emissions and releases from industrial processes, coal burning and artisanal small scale gold mining. These emissions spread across the hemispheres and affect the health of people and their environment far away from the point of release.

Third we have to deal with products. Some developing countries lack the capacity to deal with mercury containing products during use and at the end of the life cycle. It is imperative that we phase out those products as rapidly as possible especially since affordable alternatives are available for many. As political leaders how could we defend ourselves if we fail to protect the vulnerable in poor countries from products they may not even have used?

Of course the EU is not asking developing countries to solve this problem alone. We need to work together and to be accountable to each other through a robust compliance regime.

Developed countries must take ambitious action at home on supply, uses and emissions.

For an ambitious Convention to be implemented effectively, donors also have to support the efforts of developing countries with finance, technical assistance and by promoting technology transfer.

The support must be delivered as soon and as effectively as possible and we continue to see the GEF as the financial mechanism for this. In conclusion, let me assure you Mr. Chairman, of the commitment of the European Union to work constructively to achieve a successful outcome to our work on Friday evening.

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