



**COUNCIL OF  
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**NOTE**

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from: General Secretariat  
to: Delegations

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Subject: International Meetings and Events  
Fifth session of the Intergovernmental Negotiating Committee to prepare a global legally binding instrument on mercury (INC 5)  
(Geneva, 13-18 January 2013)  
- Information from the Presidency and the Commission

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Delegations will find attached an information note on the above, submitted jointly by the Presidency and the Commission, to be dealt with under "other business" at the meeting of the Council (Environment) on 21 March 2013.

**Outcome of the fifth session of the intergovernmental negotiating committee on a global,  
legally binding instrument on mercury (INC 5)**

**(Geneva, 13-18 January 2013)**

**- Information from the Presidency and the Commission -**

1. Mercury and most of its compounds are highly toxic to humans, ecosystems and wildlife. This chemical element has therefore been recognised as a substance of global concern by UNEP since 2003<sup>1</sup> and is, at EU level, subject to a comprehensive set of control measures under the Community Strategy Concerning Mercury (the Strategy) adopted in 2005<sup>2</sup>.
2. Based on the policy approach defined in the Strategy, the EU has asked since 2005 for the negotiation of a global, legally binding instrument on mercury under the auspices of UNEP. Mercury is persistent in the environment and mercury emissions to air are subject to long-range atmospheric transport, subsequent deposition globally and bioaccumulation in the food chain, particularly in fish. Control measures limited to the geographical area of the EU alone are therefore not sufficient to tackle this global concern regarding mercury.
3. Initially, the opening of negotiations was refused by major key players (USA, India and China) until the 25<sup>th</sup> session of the UNEP Governing Council (GC 25) in February 2009 where the USA reversed its position and supported the development of a mercury instrument, allowing for a breakthrough in the negotiations.
4. The agreed overall EU position (Council Conclusions of December 2008) called for a comprehensive mercury instrument, covering actions to reduce the supply of mercury; reduce the demand for mercury in products and processes; reduce international trade in mercury; reduce atmospheric emissions of mercury; achieve environmentally sound management of mercury-containing wastes; find environmentally sound storage solutions for mercury; address remediation of existing contaminated sites; and, increase knowledge. The Council stressed the importance of contributing actively to the negotiation on all elements of the future global mercury instrument in its Conclusions of June 2012.

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<sup>1</sup> UNEP Governing Council Decision 23/9

<sup>2</sup> COM(2005)20 final, 28.1.2005; revised by COM(2010)723 final, 7.12.2010

5. The Decision of the Governing Council GC 25/5 gave the Intergovernmental Negotiating Committee (INC) a similarly broad mandate for a comprehensive instrument.
6. Based on this mandate, five INCs were held: INC-1 in Stockholm in June 2010, INC-2 in the town of Chiba, Japan, in January 2011, INC-3 in Nairobi, Kenya, in November 2011, INC-4 in June/July 2012 in Punta del Este, Uruguay, and finally INC-5 in Geneva in January 2013.
7. On 14 December 2010 the Council decided to authorise the Commission to negotiate, on behalf of the Union and as regards matters falling within the Union's competence, a legally binding instrument on mercury, in consultation with a special committee of representatives of Member States, and in accordance with the negotiating directives set out in the Addendum to the authorisation. Furthermore, practical arrangements for INC-2 were agreed in January 2011. For all following INCs, no changes were made to these arrangements.
8. INC-5 came to closure in the early morning of 19 January 2013 by adopting the text of a comprehensive global legally binding Convention to tackle mercury, thereby fulfilling the mandate given by UNEP GC Decision 25/5 to conclude the negotiation process prior to the 27<sup>th</sup> regular session of the UNEP Governing Council (Nairobi, 18-22 February 2013).
9. The EU was a key driver for both the launch and the conduct of this negotiating process. The new Convention, which is to be considered as a significant success, will bring benefits to populations all around the world, including the citizens of the EU, given the long distances that mercury can travel in the air. Pregnant women, infants and children are at particular risk from mercury in the food-chain and this Convention will bring about significant decreases to their exposure to this toxic substance in the long term.
10. The Convention covers all aspects of the mercury life cycle, from primary mining to waste disposal, including trade provisions, rules for artisanal and small scale gold mining, products containing mercury, industrial processes using mercury and mercury emissions to air. A specific article on health aspects is also included. Furthermore, the text contains dynamic provisions allowing for the future development of the Mercury Convention in order to provide for further targeted progressive action to be taken. The vast majority of EU objectives are reflected in the final text. It was in particular possible to find agreement on a phase-out date for primary mercury mining as well as on phase-out dates for a long list of mercury-added products.

An overview on the main substantive provisions within the Convention is given in the annex below.

11. It was also possible to agree on a financial mechanism for the Mercury Convention, consisting of the Global Environment Facility (GEF) complemented by a specific programme for capacity building and technical assistance. The Convention also establishes a compliance mechanism; defines the main tasks of the Compliance Committee and includes provisions on membership, triggers and decision-making that will allow the Compliance Committee to work from the outset. These elements are innovative and represent significant progress in this area compared to previous multilateral environmental agreements.
12. It is worth noting that both the US and China were actively involved in the negotiation process and both countries are likely to ratify the new Mercury Convention.
13. After the successful conclusion of the negotiation process, Japan will now host the diplomatic conference for signing the new Mercury Convention between 7 and 11 October 2013 in the town of Kumamoto. It will be named "Minamata Convention" after the nearby town where the worst ever case of mercury pollution took place between the early 1930's and the late 1960's.
14. The Commission will submit a proposal to Council for a Decision authorising the signing of the Mercury Convention on behalf of the Union, in accordance with Article 218(5) TFEU.

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## **ANNEX –main mercury control provisions (following the provisional numbering of Articles)**

### **Article 3 – Supply and trade**

Any new primary mining is banned as of entry into force of the Convention; already existing mercury mines are banned fifteen years after entry into force for the Party. Mercury no longer used in the chlor-alkali industry is earmarked for final disposal. The trade control regime applying to metallic mercury contains a "written consent" element.

### **Article 6 – Mercury-added products**

A comprehensive list of mercury added products that were proposed intersessionally by the EU together with Japan and Jamaica are to be phased out by 2020. All products (listed in a simplified manner in an Annex) are already controlled within EU law. Future Conference of the Parties (CoPs) of the Convention will facilitate the addition of new products to the list for phase out. The Convention also includes specific exclusions for certain products and measures for the phase down on the use of dental amalgam.

### **Article 7 – Manufacturing processes in which mercury is used (including the vinyl chlorine monomer (VCM) process in China, essential for PVC production)**

The initial EU concept was largely confirmed by the negotiators. Upon request by some developing countries, the phase-out date for chlor-alkali industry was set at 2025, five years later than initially intended. All other processes are listed in an annex to the Convention that gives the power to the CoP to ban the use of mercury in those processes, once technically and economically feasible non-mercury alternatives are available. This is an important move for China regarding its strategic industry sector that uses mercury catalysts to produce VCM (Vinyl Chloride Monomer), a precursor of PVC.

### **Article 8 – Exemptions that may apply to the deadlines set by Articles 6 and 7**

The final text applies a fairly strict regime, allowing a Party to register once for an exemption limited in time to 5 years, with the possibility to prolong once for another five years under the control of the CoP. A backstop mechanism ensures a final end-date for all exemptions ten years after the phase-out date fixed in the Convention itself, whenever the point in time a Party requested an exemption.

### **Article 9 – artisanal and small scale gold mining (ASGM)**

This sector is a significant contributor to global mercury pollution, given that its share in total mercury emissions into the atmosphere is estimated to be around 37%. Given the informal and partly illegal character of this sector, the Convention provides for the establishment of national plans focussing on the elimination of the most polluting practices.

### **Article 10 - Atmospheric emissions**

The Convention requires new power plants, cement kilns, waste incinerators and non-ferrous metals smelters to use the best available techniques (BAT) no later than five years after its entry into force for a Party. For existing installations, a choice amongst a menu of measures is possible, at least one of which has to be implemented within ten years after entry into force for a Party. The measures must achieve an overall emission reduction for existing plants over time.

### **Article 11 - Releases to water and land**

The scope of this article is limited to those sources that are neither covered by other parts of the Convention, nor regulated by a Party at national level and that are identified by a Party as being significant. Provisions on releases are largely copied from those on emissions, but, given the undefined and limited scope, are weaker, and do not include a requirement to use the best available techniques, nor an overall emission reduction requirement.

### **Article 13 – Waste**

Mercury waste will be treated in accordance with the Basel Convention, thereby avoiding any specific new regime. Furthermore, the CoP is tasked with adopting requirements concerning the management of mercury wastes in an additional Annex to the Convention that will be stronger than the guidance presently provided for in other multilateral environmental agreements such as the Basel Convention.

### **Article 20bis – Health aspects**

Parties to the Convention are encouraged to develop health guidelines, public education programmes and set targets for mercury exposure reduction. The Convention also encourages enhanced medical care and the establishment of better training of health care professionals in identifying and treating mercury-related effects.