



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 8 October 2012

14577/12

ENV	746
COMER	208
MI	600
ONU	124

INFORMATION NOTE

from: General Secretariat

to: Delegations

Subject: 4th session of the Intergovernmental Negotiating Committee on mercury (INC4)
(Punta del Este, Uruguay, 27 June - 2 July 2012)
- Compilation of statements from the European Union (and its Member States)

Delegations will find attached, for information, in the Annex a compilation of statements from the EU (and its Member States) as delivered during INC4.

STATEMENTS FROM THE EUROPEAN UNION AND ITS MEMBER STATES

STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES

OPENING STATEMENT

The European Union and its Member States are keen to make significant progress in the negotiations at INC-4 with a view to their conclusion at INC-5. We would also like to extend our thanks to the Government of Uruguay for inviting us to attend this meeting here in Punta del Este as well as to the Secretariat for all their efforts and work leading up to this meeting.

In all meetings of the Intergovernmental Negotiating Committee we have made sound progress, not least, Mr Chairman, thanks to your careful chairmanship. We support your proposal for the organisation of this fourth session as laid down in the scenario note. This implies our readiness to work even more than previously in contact groups. We also fully share your ambitions as to the desired outcome of this session and we will continue to contribute to the negotiation process in an active and constructive way.

We also would like to thank all those who, between INC-3 and today, have put significant effort into making progress on selected issues, either informally or through the inter-sessional format. We consider the documents produced in these processes as very helpful and that they provide a good starting point for negotiations at INC-4.

We would also like to announce that we have made/will shortly make available to the secretariat Conference Room Papers on supply and trade, atmospheric emissions, and storage and waste. We hope that these papers will help all of us here in making progress at INC-4 with a view to a sound and agreeable outcome on these important items.

We also hope that the event hosted by the Danish EU Presidency yesterday afternoon helped clarify the concept and implications of best available techniques, thereby contributing to progress in these negotiations.

Mr Chairman, you can rely on our constructive attitude and co-operation during this session. We are confident that INC-4 will be a very successful event. Thank you.

STATEMENT FROM THE EUROPEAN UNION

SUPPLY AND TRADE

As already stated at INC-3, the EU sees the need for strong provisions targeting not only primary mining but all significant mercury supply sources in the legally binding instrument. Supply-side measures can make a major contribution to the overall aim of reducing exposure to mercury, support the proper implementation of demand-side measures and enhance the overall cost-efficiency of the future instrument.

The provisions on supply and trade have not been discussed in a contact group at previous INC meetings. As the final structure of the instrument depends very much on how both supply and trade are addressed, we therefore see it as urgent that these provisions are discussed further at INC-4 in a contact group.

We see however possibilities for a significant simplification of the supply and trade sector as laid down in document INC.4/3. We have therefore submitted a Conference Room Paper to this meeting, explaining our thinking in more detail and proposing streamlined legal text. The guiding principle is the merging of Articles 3, 4 and 5 and the deletion of Annexes A and B. In these proposals we have also addressed trade between parties and non-parties and we have taken into account the ideas outlined in the CRPs tabled by Japan and by the US at INC-3 and we hope that this can contribute to finding a commonly agreed solution to supply and trade provisions.

STATEMENT FROM THE EUROPEAN UNION

PRODUCTS AND PROCESSES + ALLOWABLE-USE EXEMPTIONS

The European Union would like to thank Japan for taking the initiative, supported by the EU and others, to organise informal contacts on the issue of products and processes in preparing for INC-4. We very much welcome that this has triggered constructive contributions from many.

We are happy to confirm that we can accept the outcome of these consultations, as now tabled by Japan, Jamaica and the Russian Federation, in the form of conference room paper number 1 (CRP-1), as the basis for further negotiations. This paper forms a good starting point and should facilitate our discussion. We are looking forward to working now at contact group level where we will make detailed comments and suggestions aiming at further improvements in the text.

We have also studied the other CRPs on this issue submitted by the African Group (CRP-3) and by Norway and Switzerland (CRP-15)

Mr Chairman, we have so far not yet entered into a detailed discussion of allowable-use exemptions, given that the Articles on products and processes and the level of obligations contained therein needed to be developed in more detail. In this regard, it is our understanding that the introduction by the Secretariat of document INC4/6, on transitional arrangements, is a confirmation of your intention to also include Article 8 on allowable use exemptions, within the remit of the contact group that you are going to establish. We will be happy for your confirmation as the provisions on allowable-use exemptions are closely interlinked with Articles 6 and 7.

In fact Mr Chair, in the opinion of the European Union, an ideal legally binding instrument would not need any exemption. All obligations under the instrument should be binding for all Parties and the appropriate setting of deadlines in the relevant Annexes should ensure that everybody is in a position to ratify and to comply with the Mercury Convention.

If exemptions are nevertheless needed, they should not divert the future legally binding instrument from its aim, and those exemptions should be limited to the articles on products and processes. They should be limited in number and time as well as subject to a robust control mechanism.

STATEMENT FROM THE EUROPEAN UNION

ATMOSPHERIC EMISSIONS

The European Union attaches great importance to provisions related to atmospheric emissions in the future legally binding instrument on mercury.

We participated actively in the contact group established during INC-3 and we are keen to continue working at this level. The paper developed by the co-chairs of the contact group is a good starting point for the further conceptual discussion.

Working from the ideas on promotion of Best Available Technique or BAT and a list of actions that provide flexibility, we have made proposals available in a CRP including suggestions for legal text which in our view would enact the ideas in the co-chairs paper. We hope this will contribute to the negotiation process and will help to reach an agreement on realistic, yet ambitious and effective, approaches.

One of the main elements of the approach proposed both in the co-chairs paper and our CRP is BAT. We hope that the working reception the EU organised yesterday was useful in developing a common understanding of how BAT would function and the kind of flexibility it offers. We stand ready to discuss and explain further in the contact group.

STATEMENT FROM THE EUROPEAN UNION

STORAGE, WASTE AND CONTAMINATED SITES: STORAGE REQUIREMENTS

In the context of negotiations at contact group level during INC-3, the European Union had proposed the inclusion of mandatory requirements – rather than non-binding guidance – into the provisions of the Articles 12 and 13. This is important since, without requirements, we see a serious risk of undermining of the Convention itself with inappropriate treatment of mercury stocks and mercury waste resulting in potential harm to human health and the environment. We had promised to explain our thinking behind this in more detail and to come forward with a proposal on how such requirements could look like.

The EU has therefore now submitted a Conference Room Paper containing such requirements, with a view to discussing them in detail at contact group level. **In acknowledging that the EU believes that requirements are required for both Articles 12 and 13 we feel that certain changes may be required to the language resulting from the discussions on these Articles at INC-3. In particular, clarity would be required concerning the scope of requirements, the interrelationship between requirements under Articles 12 and 13 and the need for requirements to be possibly updated in the future. With this in mind we have included text proposals for a revision of Articles 12 and 13, so that the paper now gives a coherent view on the overall EU position regarding the provisions on storage and waste. We hope that our contribution will help to foster the negotiation process and we are available for any additional question our proposal might trigger.**

STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES

FINANCE AND TECHNICAL ASSISTANCE

Thank you, Mr Chairman

The European Union and its Member States welcome the progress made between INC-3 and INC-4 in the discussions on financial resources and technical assistance. We would like to thank the co-chairs and other participants for their work at the intersessional meeting in Budapest.

We welcome the co-chairs proposal for a conceptual approach, and we consider the draft text for Articles 15 and 16 as a good basis for our continued discussions. However, a number of issues still need to be resolved and we look forward to discuss this during INC-4.

Let me highlight some of the considerations, the EU and MS will have.

We recognize the importance of mobilising national and international financial resources from all possible sources in order to ensure successful implementation of the instrument. It is essential that all parties make domestic resources available within their capabilities, especially through mainstreaming in national budgets and development strategies as well as private sector involvement.

We acknowledge that some legal obligations will require capacity-building, technical and supplementary financial assistance for successful implementation by developing countries, especially the least developed. Countries at different levels of development face different challenges and have different capacities. They therefore need different types of assistance, depending on the specific implementation challenges they face, as well as their national financial, technical, technological and educational capacities and capabilities.

An appropriate financial mechanism with fair burden sharing will therefore, be important to provide long-term predictable funding to meet the agreed full costs of enabling activities; and the agreed incremental costs of implementing some legal obligations under the Convention.

While acknowledging the concerns expressed by other parties, the EU and its Member States see value in the GEF as the financial mechanism for mercury. In many ways, we believe the GEF offers several intrinsic advantages. These include 1) experience in funding chemicals and mercury activities; 2) synergies with other GEF activity areas, in particular POP's and Ozone and 3) the ability to leverage the private sector involvement. The GEF is also fully operational which would save time and minimize transaction costs. The GEF will of course be accountable to the COP, in developing its strategy for mercury funding. It would be crucial for the COP to give practical guidance setting out clear priorities.

The EU and MS recognize that financing is required now if the Convention is to be launched successfully. The financial mechanism cannot be available until the Convention is in force, so we need to provide resources on a voluntary basis for the interim period. This will be important to support countries in preparing for ratification and should be directed primarily at signatories. Indeed, the GEF has already started providing support to certain activities and we see the merits of the GEF expanding its support to other activities that would assist parties in the period before entry into force.

Finally, Mr. Chairman, as I mentioned when we discussed compliance we believe that the contact groups on financial and technical assistance and the contact group on compliance should be given equal time.

Thank you

STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES

IMPLEMENTATION/COMPLIANCE

Thank you Mr. Chairman.

The European Union and its Member States strongly support the establishment of a committee which will promote compliance with the provisions of the convention.

Proper implementation is in the interest of all the future Parties and we support an approach which is basically facilitative and non-confrontational.

Such a committee and a mechanism on financial assistance will be mutually supportive and key to fulfilling the objectives of the convention. It is therefore crucial that they are given equal weight in the elaboration as well as in the final text of the convention. Therefore, in order to start detailed deliberations on a committee - as we have already done on financial resources and to some extent on technical assistance - we would very much welcome the establishment of the contact group on compliance.

The EU and its Member States support option 1 as the basis for negotiations. We take the view that the Committee needs to be established in the convention, and the convention should include basic features sufficient for the Committee to be able to promote compliance from the outset. Further rules of procedure and terms of reference can be decided as deemed appropriate by the Conference of the Parties.

Finally, Mr. Chair, the EU and its Member States believe that negotiations in the contact groups on the compliance committee and on the financial mechanism should be given equal time.

Thank you.

STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES

SECTION J

Statement on Section J on awareness-raising, research and monitoring, and communication of information

The EU and its member states support general implementation plans being of a discretionary nature which should be compiled by Parties before entry into force of the future Mercury Convention. We have concerns about the provision in Art. 21 paragraph 3, of submitting NIPs for review and evaluation by the CoP that it may be incompatible in our view with the discretionary character of such plans. This does not exclude mandatory obligations on specific issues within the conventions text, such as the management of mercury stocks. The EU and its Member States are of course prepared to discuss NIPs in a more detailed manner in the sub-group and support option one as negotiating starting point.

Information exchange (Art. 18)

The European Union and its Member States can broadly support the approach of the text. We appreciate the inclusion of existing national and international centres as additional sources of information related to mercury. We would however also welcome a provision on cooperation with the existing chemicals and waste Conventions and with SAICM. Such a widening of the information source base would be beneficial for the implementation of the Convention. Lastly, we want to stress that data on human health and safety should not be regarded as confidential.

Public information, awareness and education (Art. 19)

The European Union and its Member States can support the approach taken in the text of Article 19 and underline the importance of having provisions in the Convention on information to the public and especially to vulnerable groups. The information shall cover health and environmental effects of mercury as well as releases of mercury.

Research, development and monitoring (Art. 20)

The European Union and its Member States generally support the need for additional research and monitoring activities both in environment and human health sectors but, taking into account the solid knowledge base that already exists in the field of mercury, future obligations should preferably be built on already existing international and national programmes. The proposed provisions in articles 18 to 23 should be seen together, and the interlinkages should be taken into account. We believe that monitoring activities in particular should be tailor-made with the objective of fulfilling the obligation to evaluate the effectiveness of the Convention as laid down in Article 23. The costs for collecting additional necessary information should be reasonable and co-ordination with already existing monitoring programmes should be ensured.

Reporting (Art. 22)

The European Union and its Member States support option 1 but have concern regarding paragraph 2 (c) bis on custom codes, which need clarification in terms of added value and implementability. The extent to which detailed provisions in this Article are needed also depends on the wording of reporting obligations contained in other Articles of the Convention, like on supply, products and emissions. The examination of existing reporting obligations within other MEA's should guide us and we should seek to establish synergies with these reporting obligations as far as possible. So Mr. Chairman we are of course prepared to discuss Art. 22 in the contact group but the text cannot be finalised due to the cross link to other parts of the convention.

Effectiveness evaluation (Art. 23)

The European Union and its Member States support the approach taken in Article 23, including adoption of evaluation criteria and indicators as proposed in paragraph 3. Such an evaluation could help developing and improving the Convention and its implementation in future. We also support looking into existing infrastructures for effectiveness evaluation in other MEA's like the Stockholm Convention and building on these experiences when selecting the evaluation criteria and indicators. Finally, the European Union and its Member States oppose the suggestion to include a reference to the financial mechanism in para 2 to the Article.

STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES HEALTH ASPECTS

(ART. 20 BIS)

We thank GRULAC for their contribution in CRP19. The European Union and its Member States fully recognise the importance of health aspects related to the use of and exposure to mercury and we are pleased to see health aspects already integrated in the ASGM section and in other Articles like 18, 19 and 20. Like New Zealand and USA we still do not see a need for a separate stand-alone Article on health.

We have carefully read the GRULAC CRP19 and we are concerned about its content. In our view the obligations go well beyond what is expected to be covered by a Multilateral Environmental Agreement like this. We do think that most of the proposed provisions fall within the remit of national health authorities and, in an international perspective, within the competences of the World Health Organisation or the International Labour Organisation. We are prepared to discuss in more detail whether some of the issues in this paper could be integrated into one or some of the existing Articles of the Convention.

Thank you.

SECTION K, M AND N

Section K: Institutional arrangements

- On Article 25 on the Secretariat, the European Union and its Member States support the paragraphs revised by the Legal Group. We also support a provision on synergies with other chemical and waste conventions and therefore support paragraph 4.

Section M: Further developments of the Convention

- We support the overall approach laid down in Articles 27 and 28
- On Article 27 paragraph 1 we do not favour any restrictions on the possibility to propose amendments to the Convention and its annexes, as contained in the text in square brackets. We believe that once the Convention is in force parties need flexibility to adapt the Convention to their needs and scientific and technological development.
- With regard to Article 27 paragraph 3, we believe that it is essential that the amendment procedures provide for a possibility of majority voting if all efforts for consensus have been exhausted.
- On paragraph 5 of Article 27, we are in favour of the so called “fixed time approach” and it is important to make this clear in the text. This means that the provision should refer to “three fourths of the Parties at the time at which the amendment was adopted”

Section N: Final provisions

- On Article 31 on ratification, acceptance, approval or accession, we are open to the concept in paragraph 4 that states and regional economic integration organisations shall include in their instruments of ratification a declaration identifying the legislation or other measures taken to implement this Convention. As to the text proposed in paragraph 5, we would prefer provisions which allow Parties to opt out of any amendment to an annex but we are ready to discuss the possibility for a Party to declare in its instrument of ratification that an amendment shall enter into force only upon the specific ratification of that amendment.
- On Article 32 on entry into force we support 50 ratifications for the entry into force of the instrument. Regarding paragraph 4 we do not support the linking of the application of the legal obligations with the establishment of a multilateral fund. Obligations in an international treaty should not be conditional in this way.
- On Article 33 on reservations, we take the view that no reservation should be made in line with the precedents in the field of environment. Indeed, allowing for reservations would be against the objective and purpose of the instrument.
- On Article 34 on withdrawal, we support the longer period of three years in line with the relevant precedents, i.e. Stockholm, Rotterdam and Basel. 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.

STATEMENT FROM THE EUROPEAN UNION AND ITS MEMBER STATES HEALTH ASPECTS

CONCLUDING STATEMENT

1. Mr Chairman, the EU and its Member States would first of all like to congratulate you on your skilful chairmanship in guiding us through the heavy agenda of this meeting. We would also like to thank the Bureau for the efficient organization of the work, the chairs of contact groups for their dedicated work and the Secretariat for the excellent preparation and organisation of the meeting. The interpreters also deserve our thanks.
2. At the outset of this meeting we announced that we came here ready to work even harder than previously in various contact groups - and we certainly all have done so. We find that everybody has negotiated in an active and constructive way and we believe that we have made good progress. However we have not cleaned up as much text as foreseen. And therefore all countries still have a lot of homework to do to be well prepared for INC-5.
3. We are pleased to see that the work of the legal group is on a good track.
4. We welcome the first round of negotiations on supply and trade as well as on the compliance mechanism and the basic agreement to establish a committee in the text of the Convention. We are pleased that some progress has been made on finance and technical assistance as well as on some of the key control measures including ASGM, waste, storage and contaminated sites, products and processes and emissions. We recognise the importance of health issues in the Convention and believe it must be possible to address this issue in a way that satisfies everybody. Some of the remaining challenges we face at INC-5 are those we expected, namely finance and technical assistance emissions to air and releases to land and water.
5. Whilst there is clearly still some work to be done on a number of provisions we are convinced that the progress we have made here in Uruguay will allow us to finalise our negotiations on all outstanding issues at INC-5. We would like to encourage you, Mr Chairman to take forward the draft Convention text between now and INC-5 and guide us to an outcome that lives up to the mandate for our negotiations.

6. Mr Chairman, at the beginning of the session the Executive Director of UNEP reminded us of the ultimate objective of our work which is the protection of human health and the environment from the adverse effects of mercury. With this in mind, we believe that it is now time to go home and reflect on the results of this week and prepare ourselves so that we can fulfil our mandate and complete our work at INC5 in Geneva January next year. The EU and its Member States would like to reaffirm our commitment to continue working constructively with all partners.
7. Let me finish by thanking the Government of Uruguay for hosting the meeting and we look forward to seeing you all in Geneva in order to successfully finalise our negotiations on the Convention.
