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from: General Secretariat  
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Subject: Fourth session of the Intergovernmental Negotiating Committee on a global  
legally binding instrument on mercury (INC4)  
(Punta del Este, Uruguay, 27 June - 2 July 2012)  
- Information note from the Presidency and the Commission

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Delegations will find in the Annex an information note on the outcome of the Fourth session of the Intergovernmental Negotiating Committee on a global legally binding instrument mercury (INC4).

**Fourth session of the Intergovernmental Negotiating Committee  
on a global, legally binding instrument on mercury INC-4  
(Punta del Este, 27 June - 4 July 2012)**

*– 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 positions 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. 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 became in favour of a mercury instrument, allowing for a breakthrough in the negotiation.
3. The agreed overall EU position (Council Conclusions of December 2008) calls 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 continuing actively in the negotiations on all elements of the future global Mercury Convention in its Conclusions of June 2012.
4. The Decision of the Governing Council GC 25/5 gives the Intergovernmental Negotiating Committee (INC) a similarly broad mandate for a comprehensive instrument.

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

<sup>2</sup> COM(2005)20 final, 28.1.2005.

5. Based on this mandate, four INCs, out of five planned, have been held so far: INC-1 in Stockholm, Sweden, in June 2010, INC-2 in the town of Chiba, Japan, in January 2011, INC-3 in Nairobi, Kenya, in November 2011 and now INC-4 between 27 June and 2 July 2012 in Punta del Este, Uruguay. The negotiation process is scheduled to conclude with INC-5 in Geneva, in the week of 14 January 2013. Japan will host the diplomatic conference for signing the new global legally binding instrument in October of the same year.
6. On 14 December 2010 the Council approved a mandate authorising the Commission to participate, on behalf of the EU, as regards matters falling within the Union's competence and in respect of which the Union has adopted rules, in the negotiations on 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 this mandate. Furthermore, practical arrangements for INC-2 were agreed in January 2011. For INC-3 and INC-4 no changes were made to these arrangements.
7. The INC chairman Fernando Lugris successfully managed this fourth session in a way that resulted in a productive discussion, based on a revised paper<sup>3</sup> prepared by the UNEP Secretariat containing all potential elements of a future Mercury Convention. The document reflected input from INC-3 in the form of papers drafted by the co-chairs of contact groups as well as of distinct papers summarizing the outcome of formal as well as informal inter-sessional work on finance, products and processes.
8. Negotiations on most of the substantive points were only initiated in plenary and were rapidly passed on for more detailed debates in contact groups. As in INC-3, much of the discussion both in plenary and in the contact groups was based on the EU proposals. Significant progress was made on drafting provisions on various parts of the Convention text (artisanal and small scale gold mining, public information, research, institutional arrangements) that could be handed over to the group of legal experts for final review. Other areas where initial progress was made include trade, products and emissions.

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<sup>3</sup> UNEP (DTIE)/Hg/INC.4/3, 5 March 2012.

9. The EU was successful in having all its key ideas and texts included in the negotiating document although some of EU's most ambitious proposals met with scepticism (gradual banning of a number of sources of mercury supply, inclusion in the initial Convention of an annex containing binding requirements on storage and disposal of metallic mercury, and provisions for trade with non-parties). The meeting confirmed that the main challenges the INC faces are primary mining; emissions to air; releases to water and land; and the importance of the link between financial support to developing countries and compliance with the provisions of the instrument.
10. A number of challenging issues remain to be addressed in the upcoming negotiations:
- Control of mercury trade and mercury waste shipments since some delegations defend minimalist approaches.
  - Best available techniques (BAT): Although they are now agreed as the backbone of measures on air emissions, several major emitters (including China and India) maintained their objection to binding provisions. As a result there is no agreement on the basis for negotiations on the emissions Article but at least the Conference, after long negotiations, managed to agree upon a common definition of BAT.
  - Releases to water and soil: some delegations, mainly from South America, were adamant on the need for a separate Article on releases to water and soil alongside the Article on air emissions.
  - Products and processes: the EU has secured a review clause enabling the future addition of products and processes to the initial list of banned ones. However, the list of the processes and products subject to the initial ban remains to be discussed and agreed.
  - Health aspects: the group of Latin America and Caribbean Countries (GRULAC) as well as Africa insisted on the need for a stand-alone article on health and their draft text would have far reaching impacts on public health issues. Further analysis of the text was requested and will be done by the Secretariat before INC5.

- Finance and technical assistance: as expected the discussions on these issues made only little progress. Some developing countries brought in a new demand for an article on technology transfer.
11. The Commission or the Presidency provided statements on all items of the agenda and submitted three Conference Room Papers (CRPs) on emissions, storage and waste, and supply and trade. These were welcomed by delegations.
  12. INC-4 decided on limited intersessional work before the 5<sup>th</sup> and final session. There will be no formal meeting, besides the usual regional preparatory meetings, before INC-5. The Secretariat was invited to perform some tasks in the field of data collection and assessment related to the BAT concept. However, there was a request from the Chair to all stakeholders to engage in outreach activities prior to INC-5 in order to further explore positions and possible compromises on all elements of the Convention.
  13. The EU proposed, and received, plenary support to give a mandate to the INC Chair to propose compromise text where this could facilitate the final negotiations. Two meetings of the Bureau before INC-5, one of which will involve contact group co-chairs and possibly regional representatives, will advise the Chair on possible compromises.
  14. Given the overall constructive debate at INC-4, the meeting can be considered as a success, although major substantive provisions – in particular on supply and trade, products, finance/compliance, and atmospheric emissions – are still far from agreement.
  15. The EU preparations for INC-5 have started in order to ensure that we continue playing an active and constructive role in the process as well as support and stress the timely conclusion of the negotiation process as planned.