



Council of the  
European Union

Brussels, 9 June 2017  
(OR. en)

9982/17

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**Interinstitutional File:**  
**2016/0008 (NLE)**

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ENV 579  
COMER 76  
MI 478  
ONU 79  
SAN 237  
IND 151

#### 'I/A' ITEM NOTE

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From: General Secretariat of the Council  
To: Permanent Representatives Committee/Council

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No. Cion doc.: 5375/16 ENV 19 COMER 1 MI 24 ONU 4 - COM(2016) 3 final

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Subject: Draft Council Decision on the position to be adopted, on behalf of the European Union, at the first meeting of the Conference of the Parties of the Minamata Convention on Mercury with regard to the adoption of the required content of the certification referred to in Article 3(12) of the Convention and of the guidance referred to in Article 8(8) and (9) of the Convention  
= Adoption

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1. On 10 October 2013 the Minamata Convention on Mercury (the 'Convention'), which was negotiated under the auspices of the United Nations Environment Programme (UNEP), was adopted at a Conference of the Plenipotentiaries in Kumamoto, Japan. The European Union (EU) and 26 Member States have signed the Convention<sup>1</sup>.

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<sup>1</sup> The two Member States that did not sign the Convention, Estonia and Portugal, have expressed their commitment to ratify it.

2. On 18 January 2016, the Commission submitted a proposal<sup>2</sup> for a Council Decision establishing the position to be taken at the seventh meeting of the Intergovernmental Negotiating Committee on mercury (INC) and at the first meeting of the meeting of the Conference of the Parties to the Convention (COP), with regard to the provisional and subsequent final adoption of guidance referred to in Article 8, paragraphs 8 and 9 of the Convention.
3. The Working Party on the Environment considered the proposal in February 2016. While broad support was expressed for the content of the guidance documents that the draft Decision referred to and that reflected the current practice within the EU and its Member States, no further action on the level of the Council was taken. This was in particular due to concerns raised by a significant number of delegations in relation to the fact that the INC was not considered to be "a body set up by an agreement", as referred to in Article 218(9) TFEU, and that this condition for the procedural basis to apply was therefore not fulfilled. Furthermore, at that point in time the ratification process of the Convention was still ongoing and the timing of the first COP uncertain.<sup>3</sup>
4. On 11 May 2017, the Minamata Convention on Mercury was approved, on behalf of the European Union, by way of Council Decision<sup>4</sup>. The deposit of the instruments of ratification of the EU and of seven Member States on 18 May 2017 will trigger the entry into force of the Convention on 16 August 2017 (i.e. the ninetieth day after the date of deposit of the fiftieth instrument of ratification, acceptance, approval or accession).
5. The first COP will be held on 24-29 September 2017 in Geneva. The Union should therefore determine the position to be taken at the COP 1 regarding acts having legal effects.

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<sup>2</sup> Doc. 5375/16.

<sup>3</sup> Doc. 6248/1/16 REV 1.

<sup>4</sup> Council Decision (EU) 2017/939 of 11 May 2017 on the conclusion on behalf of the European Union of the Minamata Convention on Mercury (OJ L 142, 2.6.2017, p. 4).

6. On 15 May 2017 the Working Party on the Environment (WPE) considered a Presidency compromise text adapting the draft Council Decision to the current situation with a view to the first COP. It also refers to an act having legal effects that has to be adopted by COP 1 in accordance with the Convention, but was not yet available at the time of the submission of the Commission proposal in January 2016, i.e. the required content of the certification referred to in Article 3(12) of the Convention.
7. Discussions at the Working Party indicated that the Presidency compromise text, as finalised by the lawyers-linguists and set out in document 9666/17, is **acceptable** to all delegations.
8. The Committee of Permanent Representatives is invited to recommend that the Council adopts the Decision as set out in document 9666/17 as an "A" item at its meeting on 19 June 2017.

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