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PROPOSAL

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 2 February 2016

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: Proposal for a COUNCIL DECISION on the conclusion of the Minamata
Convention on Mercury

Delegations will find attached document COM(2016) 42 final.

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Brussels, 2.2.2016
COM(2016) 42 final

2016/0021 (NLE)

Proposal for a
COUNCIL DECISION
on the conclusion of the Minamata Convention on Mercury

EXPLANATORY MEMORANDUM

The Minamata Convention on Mercury (hereafter "the Minamata Convention" or "the Convention") concluded under the auspices of the United Nations Environment Programme (UNEP) is the main international legal framework for cooperation and measures to control and limit the use and anthropogenic emissions of mercury and mercury compounds to air, water and land.

Mercury is recognised as a global threat to human health and the environment. Exposure to high levels of mercury, including through the consumption of contaminated fish and seafood, can cause harm to the brain, lungs, kidneys and to the immune system. Mercury is characterised by its transboundary nature, as emissions can travel for thousands of kilometers through air and water from the place where they occur. In the EU, it is estimated that between 40% and 80% of the total mercury deposition originates from third countries, including for a large part from East and South-East Asia.

The Convention was adopted and opened for signature at a Conference of the Plenipotentiaries in Kumamoto, Japan, in October 2013. The European Union and twenty-one Member States signed the Convention on 10 October 2013 while Croatia, Cyprus, Latvia and Poland did so on 24 September 2014 and Malta on 8 October 2014.¹

The Convention addresses the whole life-cycle of mercury with the objective to protect human health and the environment. It sets restrictions on primary mining and international trade of mercury, prohibits the manufacture, import and export of a wide range of mercury-added products, foresees prohibitions or operating conditions for several manufacturing processes using mercury and calls for discouraging new uses of mercury in products and industrial processes. In addition, the Convention provides for measures to be taken to reduce mercury emissions from Artisanal and Small-scale Gold Mining (hereafter, "ASGM") and major industrial activities, including through the use of best available techniques. It requires also interim storage of mercury and management of mercury waste to occur in an environmentally sound manner.

The EU has made significant progress for the last 10 years in addressing mercury domestically as a follow-up to the adoption in 2005 of the Community Strategy Concerning Mercury (hereafter, "the Strategy"),² as supported by the Council of the European Union³ and the European Parliament.⁴ The Strategy consists of 20 actions aiming at reducing mercury emissions and at cutting mercury supply and demand. It highlights the transboundary character of mercury emissions and the necessity for action at global level with seven of its actions focused on the need to support and promote international activities. The review of the

¹ While Estonia and Portugal have not signed the Convention, they have expressed their commitment to ratify it.

² Communication of 28 January 2005 from the Commission to the Council and the European Parliament "Community Strategy Concerning Mercury", COM(2005) 20 final.

³ Council Conclusions "On the Community Strategy concerning mercury", 2670th Environment Council meeting, 24.06.2005.

⁴ European Parliament Resolution on the Community Strategy concerning mercury, P6_TA(2006)0078, 14.03.2006

Strategy in 2010⁵ recalls that the exposure of the environment and individuals in the EU cannot be reduced to an acceptable level via domestic policies alone and that co-ordinated international action is thus necessary to address effectively the mercury problem. Alike the initial 2005 Strategy, this review was also supported by the Council of the European Union⁶ that reaffirmed the need to minimise and, where feasible, eliminate global anthropogenic mercury emissions to air, water and land and, for that purpose, for the EU to intensify its international efforts to reduce mercury emissions and exposure on a global scale.

Whereas the UNEP Governing Council launched in 2009 the international process for the development of a global legally-binding instrument, Council Decision of 6 December 2010 authorised the Union to take part to this process.⁷ Not only has the EU been instrumental in promoting such negotiations, but also in influencing their outcome throughout the six sessions of the Intergovernmental Negotiating Committee (2010-2014).

In parallel to this proposed Decision, the Commission has put forward a proposal for a Regulation by the European Parliament and the Council to transpose the limited number of provisions of the Convention that are not yet implemented into EU legislation, which are identified in the impact assessment report accompanying that proposal.⁸

In accordance with its Article 30, the Minamata Convention is subject to ratification, acceptance or approval by States and by regional economic integration organisations.

The deposit of the instruments of ratification, acceptance or approval of the Minamata Convention by the European Union and its Member States should take place collectively and in a co-ordinated fashion so as to make sure, as far as possible, that the Convention enters into force for both the EU and its Members States at the same time.

In the light of the above, it is appropriate for the European Union to approve the Convention.

The text of the Minamata Convention is attached to this Decision.

⁵ Communication of 7 December 2010 from the Commission to the European Parliament and the Council "Review of the Community Strategy Concerning Mercury", COM(2010) 723 final.

⁶ Council Conclusions "Review of the Community Strategy concerning Mercury", 3075th Environment Council meeting, 14.03.2011.

⁷ Council Decision on the participation of the Union in negotiations on a legally-binding instrument on mercury further to Decision 25/5 of the Governing Council of the United Nations Environment Programme (UNEP), 6 December 2010, 16632/10.

⁸ Commission Staff Working Document, Impact Assessment *Accompanying the documents* Proposal for a Regulation of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008 and Proposal for a Council Decision on the conclusion of the Minamata Convention on Mercury, SWD(2016) 17 final.

Proposal for a

COUNCIL DECISION

on the conclusion of the Minamata Convention on Mercury

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1), in conjunction with Article 218(6)(a) thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

Whereas:

- (1) In accordance with Council Decision of 23 September 2013⁹, the Minamata Convention on Mercury ('the Convention') was signed on 10 October 2013 by the Union, subject to its conclusion at a later date.
- (2) The Convention on Mercury was adopted in Geneva on 19 January 2013. The Convention provides a framework for the control and limitation of the use and of anthropogenic emissions and releases of mercury and mercury compounds to air, water and land with a view to protecting human health and the environment.
- (3) Mercury is a substance characterised by its transboundary nature. Global action is therefore necessary to ensure the protection of the individuals and of the environment within the Union as a complement to domestic measures.
- (4) The Seventh Environmental Action programme¹⁰ establishes the long-term objective of a non-toxic environment and states, for that purpose, that action is needed to ensure the minimisation of significant adverse effects of chemicals on human health and the environment by 2020.
- (5) The 2005 Community Strategy Concerning Mercury¹¹, as reviewed in 2010¹², seeks to reduce mercury emissions, to cut mercury supply and demand, to protect against mercury exposure and to promote international action on mercury.

⁹ Council Decision of 23 September 2013 on the signing, on behalf of the European Union, of the Minamata Convention on Mercury (doc. 11995/13).

¹⁰ Decision No 1386/2013/EU of the European Parliament and of the Council of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' (OJ L 354, 28.12.2013, p. 171).

¹¹ Communication of 28 January 2005 from the Commission to the Council and the European Parliament "Community Strategy Concerning Mercury" (COM(2005) 20 final).

(6) The Council reaffirms its commitment to the overall objective of protecting human health and the environment from releases of mercury and its compounds by minimising and, where feasible, ultimately eliminating global anthropogenic mercury releases to air, water and land¹³. The Convention contributes to the achievement of these objectives.

(7) The Convention should therefore be approved on behalf of the Union,

HAS ADOPTED THIS DECISION:

Article 1

The Minamata Convention on Mercury ('the Convention'), is approved on behalf of the Union.

The text of the Convention is attached to this Decision.

Article 2

The President of the Council shall designate the person empowered to proceed, on behalf of the Union, to the deposit of the instrument of approval provided for in Article 30(1) of the Convention, in order to express the consent of the Union to be bound by the Convention.

Article 3

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council
The President

¹² Communication of 7 December 2010 from the Commission to the European Parliament and the Council 'Review of the Community Strategy Concerning Mercury' (COM(2010) 723 final).

¹³ Council Conclusions "Review of the Community Strategy concerning Mercury", 3075th Environment Council meeting, 14 March 2011.