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**United Nations  
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**Intergovernmental negotiating committee  
to prepare a global legally binding instrument  
on mercury**

**Fourth session**

Punta del Este, Uruguay, 27 June–2 July 2012

Item 3 of the provisional agenda\*

**Preparation of a global legally binding instrument on mercury**

**Proposal for a conceptual approach and possible text on  
financial resources and technical assistance**

**Submitted by the co-chairs of the expert meeting on financial resources and  
technical assistance**

**Note by the secretariat**

1. At its third session, the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury agreed that intersessional work in preparation for the fourth session of the committee would be undertaken to further the discussions on financial resources and technical assistance. The co-chairs of the contact group on financial resources and technical and implementation assistance established during the third session were accordingly requested to prepare, with the support of the secretariat and the chair of the intergovernmental negotiating committee and advice from a meeting of experts, a proposal for articles 15 (relating to financial resources and mechanisms) and 16 (relating to technical assistance) of the draft mercury instrument, consisting of a conceptual approach followed by possible text.

2. As requested by the committee, the co-chairs of the contact group on financial resources and technical and implementation assistance, Mr. Adel Shafei Osman (Egypt) and Ms. Johanna Lissinger Peitz (Sweden), have prepared a proposal for articles 15 and 16 of the draft text, consisting of a conceptual approach followed by possible text. That proposal is set out in the annex to the present note.

**Possible action by the committee**

3. The intergovernmental negotiating committee may wish to consider using the co-chairs' proposal as the focus of its discussions on financial resources and technical assistance.

\* UNEP(DTIE)/Hg/INC.4/1.

## Annex

### **Co-chairs' proposal for a conceptual approach and possible text on financial resources and technical assistance**

#### **Background**

1. At its third session, the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury agreed that intersessional work in preparation for the committee's fourth session would be undertaken to further the discussions on financial resources and technical assistance.
2. As part of that intersessional work, the committee requested us, the co-chairs of the contact group on financial resources and technical and implementation assistance established during the third session, to prepare, with the support of the secretariat, a proposal for articles 15 and 16 of the draft mercury instrument, consisting of a conceptual approach followed by possible text. The committee agreed that in preparing our proposal we would take into account the views expressed by parties at the third session and views submitted in writing to the secretariat following that session. In addition to the views submitted in writing by parties, the committee agreed that we would also benefit from a meeting of experts that would provide advice to us on the development of the proposal.
3. The committee agreed that the meeting of experts would be chaired by us and would be attended by experts from each of the five United Nations regional groups, as follows: three from Africa, five from Asia and the Pacific, two from Central and Eastern Europe, three from Latin America and the Caribbean and six from the Western European and other States.
4. The expert meeting on financial resources and technical assistance took place in Inárcs, Hungary, from 11 to 13 April 2012. In accordance with the mandate of the committee, the expert meeting was attended by experts, as nominated by their respective regions, from Brazil, Canada, China, Costa Rica, Denmark, Gabon, Hungary, Japan, Jordan, Malaysia, Mexico, Norway, the Russian Federation, South Africa, the United Kingdom of Great Britain and Northern Ireland, the United Republic of Tanzania, the United States of America and the European Commission. An expert from India had been designated but, regrettably, was unable to attend the meeting.
5. The meeting was not a negotiating meeting; rather, the experts were nominated and attended in their personal capacities to discuss issues related to financial resources and technical assistance. Held in an informal setting, the meeting was aimed at fostering better understanding of the issues.
6. Our objective in developing this proposal was not to limit or prejudice any outcome but rather to provide a basis for a focused discussion on the provision of financial resources and technical assistance for activities under a future global legally binding instrument on mercury.

#### **I. The conceptual approach**

7. In developing provisions for the future legally binding instrument on mercury the Governing Council recognized in its decision 25/5, among other things, the need to specify arrangements for capacity-building and technical and financial assistance, recognizing that the ability of developing countries and countries with economies in transition to implement some legal obligations effectively under a legally binding instrument is dependent on the availability of capacity-building and technical and adequate financial assistance.
8. In our view, any conceptual approach to financial resources and technical assistance should include provisions that identify and address the activities that require support and when that support should be provided. It should also address who will receive assistance, who will provide it and how it should be delivered. Such a conceptual approach also must recognize that while resources can be drawn from a wide range of sources, there is a need to provide a formal structure through which they can be sought and provided. Consequently, there is a need to develop a financial mechanism. The co-chairs suggest that although a financial mechanism could not provide oversight of independent cooperation between sovereign entities or of private sector participation in activities related to implementation of the mercury instrument, such support and assistance would benefit from provisions in the legally binding instrument that encourage wide-ranging cooperation and participation.

9. In developing a conceptual approach, we based our work on the following understanding of some key terms:

(a) **Financial resources:** all available resources for implementing activities related to mercury under the instrument. Financial resources are not limited to those available from the financial mechanism and can include, among other things, domestic resources; resources provided through multilateral and bilateral cooperation; mainstreaming in national budgets and development strategies; and private sector involvement;

(b) **Financial mechanism:** a mechanism established in the mercury instrument and accountable to, guided by or under the authority of the Conference of the Parties. The mechanism will include a fund. The mechanism could also comprise other external support;

(c) **Technical assistance:** assistance in respect of technical matters including, among other things, traditional north-south cooperation, support for efforts to promote south-south and other cooperation, national and regional capacity-building and support for technology transfer.

## A. Provisions related to what is to be financed

10. It is clear that the mercury instrument will set out obligations to be met by the Parties to the instrument. There is a question, however, as to whether all activities aimed at meeting those obligations would be eligible for financial and technical support or whether only some such activities would be eligible. There is also a question of whether financing should be available to defray the entire cost of such eligible activities or only part of it, and whether the extent to which financing is available would vary depending on the type of activity. Those activities that would be financed through the financial mechanism and those that would be financed through broader sources of financial resources such as, among others, mainstreaming and private sector involvement, which would be determined through national planning and regulation, should be clearly identified. At this stage, while the negotiations are continuing, it is not possible to be definitive about what would be eligible. The co-chairs propose, however, that the following broad categories be eligible and that further clarification be provided by the intergovernmental negotiating committee or by the Conference of the Parties as needed:

- (a) Enabling activities, such as rapid assessments conducted as a scoping exercise to enable eligible countries to determine the nature and extent of their mercury challenges;
- (b) Capacity-building, including at the national level;
- (c) Agreed full/agreed incremental costs,<sup>a</sup> to be defined by the Conference of the Parties, of:
  - (i) Activities to meet some legally-binding obligations;
  - (ii) Other activities that provide global environmental benefits.

## B. Provisions related to when financing should be made available

11. It is clear that the needs of Parties individually and collectively will change over time as they prepare for and then implement the mercury instrument. In that regard, the co-chairs consider that the interim period between the adoption of the mercury instrument at the anticipated diplomatic conference and its entry into force will be important in preparing for its ratification and subsequent implementation. Bearing in mind that the financial mechanism can only take effect following entry into force of the instrument, the co-chairs consider that there will be a need for certain financial resources and technical assistance to be made available during the interim period between adoption and entry into force. In recognition of that need, options for the provision of financial resources and technical assistance during the interim period could be outlined in the final act by which the instrument is adopted. Such resources and assistance would need to be provided through voluntary contributions and existing institutions. The chosen institution for providing financial resources and technical assistance during the interim period should, however, not prejudice the institution to ultimately host the financial mechanism for the instrument.

12. Consideration also needs to be given to the eligibility for funding, once the mercury instrument has entered into force and the financial mechanism is in place, of States that seek to become Parties but have not yet ratified the instrument.

<sup>a</sup> The interpretation of and understanding of “agreed full” and “agreed” costs differ, and may differ between existing multilateral agreements, and will need to be discussed further and clarified in the context of the mercury instrument.

13. Accordingly, we identify two main phases for the provision of financial resources and technical assistance:

(a) The first, prior to entry into force of the instrument, to, for example, support rapid needs assessments and readiness programmes to assist countries to prepare to implement activities to meet their obligations upon ratification;

(b) The second, following entry into force of the instrument, when the financial mechanism could provide dedicated assistance to support implementation activities.

14. Provisions in the mercury instrument addressing the issue of when resources need to be made available following its entry into force should take into consideration:

(a) The need for sufficient flexibility to respond to varying needs and circumstances over the lifetime of the instrument;

(b) The need for criteria, such as signatory of the instrument, to allow time-limited access to the financial mechanism by non-parties after entry into force of the instrument, but before their ratification of it, to assist with implementation upon ratification.

15. It may be noted that in order to achieve early reductions of mercury releases and to minimize an increased long-term legacy of mercury exposure it might be desirable to provide relatively substantial financial resources and technical assistance in the early years following entry into force of the instrument.

### **C. Provisions related to how financial resources and technical assistance are to be made available**

16. Financial resources and technical assistance should be provided to support developing countries and countries with economies in transition in implementing effectively some legal obligations arising out of the instrument. Financial resources available for implementation are not limited to resources provided through the financial mechanism but also include, among others, domestic resources; multilateral and bilateral funding; mainstreaming in national budget and development strategies; and private sector involvement.

17. In our view, a financial mechanism should be transparent, simple to use, easily accessible and responsive to identified needs, ensure timely allocation and disbursement of funds and have clear eligibility criteria. The mechanism should also be accountable to, guided by or under the authority of the Conference of the Parties, and should make use of an existing institution or existing administrative structures. The fund within the mechanism could be a single fund for the instrument or a fund with allocations specific to the instrument. The fund should have clearly defined rules governing replenishment.

18. We do not address in detail here the potential location of the fund beyond recognizing the value, such as the administrative cost savings, of using, as appropriate, existing administrative or other arrangements.

### **D. Provisions related to who is to receive financial resources and technical assistance**

19. We developed this conceptual approach to financial resources and technical assistance with the understanding that not all Parties will have the same mercury challenges due to differences in relevance of some obligations or the same need for assistance as domestic capacities and associated resources may differ.

20. Provisions on eligibility for funding should make clear:

(a) The eligibility of all developing country Parties and Parties with economies in transition;

(b) The need for targeted support for identified needs;

(c) The special circumstances and needs of least developed countries and small island developing States.

## **E. Provisions related to who is to provide financial resources and technical assistance**

21. The co-chairs recognize that there is a distinction between financial resources and a financial mechanism and that financial resources originate from a wider range of sources than merely from a financial mechanism. Any financing solution for the mercury instrument will, in the long run, benefit from a broadened base of funding sources.
22. A further distinction needs to be made between financial resources linked to the financial mechanism under the mercury instrument and those from, for example, the private sector as the ability of oversight of the resources differ.
23. A wide variety of financial resources and technical assistance would enable eligible countries to find the most appropriate support for rapid and effective implementation of activities under the instrument.
24. The financial mechanism could also include external support such as bilateral cooperation governed by the same rules as the fund.
25. The co-chairs believe that the financial mechanism should play a role in encouraging the provision of such other support, for example by leveraging bilateral cooperation or assisting parties to put legislation and enforcement arrangements in place to ensure that the private sector minimizes mercury use and internalizes the costs of complying with environmental regulations to reduce mercury emissions.
26. In the light of the above, we consider that the provisions for determining who should contribute to the fund of the financial mechanism need to take the following non-exhaustive list of alternatives into consideration:
- (a) All Parties within their capabilities;
  - (b) Parties that are not eligible for funding and others on a voluntary basis;
  - (c) Parties that are not eligible to receive funding on the basis of an indicative scale of assessed contributions and others on a voluntary basis.
27. Below we identify potential sources for financial resources and technical assistance in a broader context:
- (a) **Financial resources:**
    - (i) Provision of funds by all countries within their capabilities, noting especially the role of developed country Parties;
    - (ii) National contributions;
    - (iii) Private sector involvement;
    - (iv) Regional development banks and international financing institutions;
    - (v) Enhanced cooperation and coordination within the chemicals and wastes cluster;
    - (vi) Other sources such as multilateral development agencies and programmes and activities within their mandates;
  - (b) **Technical assistance:**
    - (i) Developed country Parties and other Parties in a position to do so on a voluntary basis; and
    - (ii) Other sources such as multilateral and bilateral development agency programmes and activities as well as partnerships, including those involving the private sector.
28. In presenting the key areas above it is noted, as already mentioned, that the Conference of the Parties could not govern independent cooperation between sovereign entities or private sector participation.

## **II. Draft text for articles 15 and 16**

29. We have drawn on the conceptual approach outlined above in developing the draft articles 15 and 16 below.

30. The draft articles are intended to permit progress at the fourth session of the intergovernmental negotiating committee by providing a focus for further deliberations and negotiations. It is not our intention to limit or prejudice the negotiations. The draft articles do not necessarily include all elements that might need to be part of a final text on finance and technical assistance, nor do they include all elements discussed in the conceptual approach.

31. Provisions for financial resources and technical assistance prior to entry into force are not set out in the draft text since in accordance with the conceptual approach we suggest that they be part of the final act.

### **A. Draft text for article 15: financial resources and mechanisms**

32. Draft article 15 reads as follows:

1. The ability of developing countries and countries with economies in transition to implement some legal obligations arising under this Convention effectively is dependent on the availability of capacity-building and technical and adequate financial assistance.

2. Financial resources shall be made available by all Parties, within their capabilities, for the implementation of activities under the Convention, including from domestic resources, multilateral and bilateral funding, mainstreaming in national budgets and development strategies and private sector involvement.

3. A mechanism for the provision of financial resources and technical assistance is hereby established to support developing country Parties and Parties with economies in transition in meeting their obligations under this Convention.

4. The mechanism shall provide funds to meet the agreed incremental costs of activities under the Convention, the costs of capacity-building, the costs of enabling activities, and other technical and financial assistance for some legal obligations arising under the Convention, as well as other costs as determined by the Conference of the Parties.

5. The mechanism shall be accountable to the Conference of the Parties, which shall at its first meeting decide on its overall policies.

6. The mechanism shall include a fund. It may also include other means of multilateral, regional and bilateral financial and technical assistance.

7. Contributions to the mechanism shall be made by all Parties within their capabilities.

8. The mechanism shall encourage the provision of financial resources from other sources, including the private sector, and shall seek to leverage such resources for the activities it supports.

### **B. Draft text for article 16: technical assistance**

33. Draft article 16 reads as follows:

1. Parties shall cooperate to provide technical assistance and capacity-building to developing country Parties and Parties with economies in transition to assist them in implementing their obligations under this Convention.

2. Technical assistance may be provided through regional and subregional delivery mechanisms, partnerships, including those involving the private sector, and bilateral and other multilateral means.

### **III. Conclusion**

34. We recognize that the negotiations are still under way and that issues related to obligations under the instrument still need to be resolved. The conceptual approach that we outline above can serve to focus the discussion on meeting the need for financial resources and technical assistance. The draft articles, we believe, provide a sound basis for continued negotiation on these issues.

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