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From:	General Secretariat of the Council
To:	Delegations
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Subject:	Draft COUNCIL DECISION on the position to be taken on behalf of the European Union at the fifth meeting of the Conference of the Parties to the Minamata Convention on Mercury as regards the adoption of a Decision to amend Annexes A and B to that Convention - Presidency compromise text

With a view to the meeting of the Working Party on the Environment (WPE) on 27 September 2023, delegations will find in the Annex a Presidency compromise text for a draft Council Decision on the Union's position at the fifth meeting of the Conference of the Parties to the Minamata Convention (COP5), which will take place from 30 October to 3 November 2023 in Geneva, Switzerland.

At the Working Party on International Environment Issues (International Chemicals/Synergies) on 12 September 2023 the Commission gave a presentation about the content of the forthcoming proposal for a Council Decision. The Presidency compromise text in the Annex takes account of discussions held at that Working Party.

The Commission's proposal for a Council Decision (doc. 13280/23) has been submitted to the Council on 22 September 2023.

Changes to the Commission's proposal are set out in **bold** and ~~striketrough~~ for deletions.

Draft

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the fifth meeting of the Conference of the Parties to the Minamata Convention on Mercury as regards the adoption of a Decision to amend Annexes A and B to that Convention

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(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Minamata Convention on Mercury (the ‘Agreement’) was concluded by the Union by Council Decision (EU) 2017/939 and entered into force on 16 August 2017.
- (2) Pursuant to Decision MC-1/1 on Rules of Procedure, adopted by the Conference of the Parties to the Agreement (‘COP’) at its first meeting, the Parties to the Agreement (the ‘Parties’) should make every effort to reach agreement on all matters of substance by consensus.

- (3) Pursuant to Articles 4(8) and 5(10) of the Agreement, the COP should, by 16 August 2022, review Annexes A and B to the Agreement, and may consider amendments to those Annexes, taking into account proposals submitted by the Parties pursuant to Articles 4(7) and 5(9) of the Agreement, information made available by the Secretariat of the Agreement pursuant to Articles 4(4) and 5(4) of the Agreement, and the availability of technically and economically feasible mercury-free alternatives taking account of associated environmental and human health risks and benefits.
- (4) On 30 April 2021, the Union submitted to the Secretariat of the Agreement a proposal¹ to amend Annexes A and B to the Agreement, in accordance with Articles 4(7) and 5(9) of that Agreement. The Union's proposal to amend Annex A to the Agreement aimed to extend its scope of application to additional mercury-added products with associated phase-out dates or mercury-regulating measures. The Union's proposal to amend Annex B to the Agreement aimed to introduce a phase-out date for the production of polyurethane using mercury-containing catalyst.
- (5) At the second segment of its fourth meeting, the COP decided in its Decision MC-4/3² to include eight new mercury-added products in its Annex A (Part I).
- (6) However, for four mercury-added products no agreement was reached on phase-out dates. Decision MC-4/3 deferred the decision on those phase-out dates to the fifth meeting of the Conference of the Parties (31 October to 3 November).

¹ Council Decision (EU) 2021/727 of 29 April 2021 on the submission, on behalf of the European Union, of proposals to amend Annexes A and B to the Minamata Convention on Mercury, regarding mercury-added products and manufacturing processes in which mercury or mercury compounds are used (OJ L 155, 5.5.2021, p. 23).

² Decision MC-4/3: Review and amendment of annexes A and B to the Minamata Convention on Mercury, 25 March 2022.

- (7) Decision MC-4/3 also deferred the decision on adding the production of polyurethane using mercury-containing catalysts to Part I of Annex B to the fifth meeting of the COP.
- (8) A new proposal for amending Annex A to the Agreement has been submitted by the Africa Region in accordance with Article 4(7) of the Agreement. The proposal concerns cosmetics, dental amalgam, and mercury-containing lamps and proposes new text for Parts I and II to Annex A.
- (9) The Union should support amendments to Annexes A and B to the Agreement in so far as they would be consistent with the Union's submission³, with the Union acquis or with EU policy.
- (10) To the extent that they are referred to in the submission by the Africa Region, the Union should support amendments to Annex A to the Agreement in so far as they cover lamps, cosmetics and dental amalgam.
- (11) At the fifth meeting of the COP, the Parties will consider the adoption of a Decision to amend Annex A to the Agreement.
- (12) It is appropriate to establish the position to be taken, on behalf of the Union, at the fifth meeting of the COP, as the proposed Decision, if adopted, will have legal effects, since the Parties will have to take measures to implement it at national or regional levels, or both.

³ Council Decision (EU) 2021/727 of 29 April 2021 on the submission, on behalf of the European Union, of proposals to amend Annexes A and B to the Minamata Convention on Mercury, regarding mercury-added products and manufacturing processes in which mercury or mercury compounds are used (OJ L 155, 5.5.2021, p. 23).

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken, on behalf of the Union, at the fifth meeting of the COP to the Agreement shall be to support the adoption of a Decision to amend Annex A thereof, which:

- is consistent with the Union acquis; or
- is consistent with Council Decision (EU) 2021/727 of 29 April 2021; or
- aims to support a phase-out of mercury-containing lamp categories referred to by the Africa Region in its submission made in accordance with Article 4(7) of the Agreement, and for which the requests for renewal of the exemptions on mercury use have been rejected, in accordance with Directive 2011/65/EU; or
- aims to support a phase-out of the use of dental amalgam.

Article 2

Refinement of the position referred to in Article 1 may be agreed to, in the light of developments at the fifth meeting of the COP, by the representatives of the Union, in consultation with Member States during on-the-spot coordination meetings, without a further decision of the Council.

Article 3

This Decision ~~is addressed to the Commission~~ **shall enter into force on the date of its adoption.**

Done at Brussels,

For the Council

The President
