

## **Submission from the EU and its Member States on the scope of application of Article 9 on releases of mercury and its compounds to water and land**

The EU and its Member States would like to share the following analysis of the provisions of the Convention regarding the scope of Article 9.

We have the view that Article 9 covers:

- (i) point sources covered by provisions of the Convention but the releases of which are not addressed in provisions other than Article 9 of the Convention as analysed below and,
- (ii) point sources of releases not covered by any other provision of the Convention than Article 9 (e.g. coal-washing, urban waste water treatment).

### ***Article 3 on primary mercury mining***

Article 3(4) bans “*new*” primary mercury mining as from the date of entry into force of the Convention for each Party. Consequently, such mining activity and related releases of mercury and mercury compounds to water and land will not occur. Hence, as new primary mercury mining is prohibited, Article 9 is not applicable.

However, existing mercury mining is only prohibited for a Party 15 years after the Convention enters into force, which is later than when Article 9 should be implemented. Hence, Article 3 does not regulate releases from existing mines nor lead to exclusion of existing primary mercury mining from the scope of Article 9.

### ***Article 4 and Annex A on mercury-added products***

Article 4 read in combination with Annex A (Part I) bans, as from 2021 the manufacture of certain batteries, switches and relays, compact fluorescent lamps, linear fluorescent lamps, high pressure mercury vapour lamps, cold cathode fluorescent lamps, cosmetics, pesticides, biocides, topical antiseptics and non-electronic measuring devices. Hence, as manufacture of those products is prohibited, Article 9 is not applicable to the manufacture of those products but is applicable to mercury-added products that do not fall under the scope of the Article 4 prohibition (e.g. pyrometers). Furthermore, Parties may postpone in line with Article 6 the deadline of the prohibition by 5 to 10 years during which manufacture would still be allowed whilst no provisions on releases are included in Article 4. Hence, manufacturing facilities of mercury-added products prohibited under Article 4 are only excluded from the scope of Article 9 to the extent that Parties have not postponed the prohibition deadlines.

Article 4 read in combination with Annex A (Part II) covers the use of dental amalgam. The control and prevention of releases from dental practices is addressed as one of the possible measures for Parties to take. Whilst this article therefore covers releases from dental clinics, it leaves the discretion to Parties on whether to implement specific measures.

### ***Article 5 and Annex B(II) on manufacturing processes***

Article 5(5)(a) explicitly requires Parties to take measures to address releases from facilities operating the manufacturing processes listed in Annex B. Those facilities are thus excluded from the scope of Article 9.

***Article 7 and Annex C on Artisanal Small-Scale Gold Mining (ASGM)***

Article 7(2) and Annex C(e) on ASGM explicitly address releases of mercury and mercury compounds to water and land. ASGM is thus excluded from the scope of Article 9.

***Article 8 and Annex D on emissions***

Article 8 and Annex D on the list of point sources of emissions of mercury and mercury compounds to the atmosphere do not address releases of mercury or mercury compounds to water and land, which are therefore covered by Article 9. Hence, Article 8 does not lead to exclusion of point sources listed in Annex D from the scope of Article 9.

***Article 10 on interim storage of mercury and mercury compounds as non-waste***

Article 10 on interim storage of mercury and mercury compounds as non-waste refers to ‘environmental sound storage’, which implies controlling/preventing the releases of mercury to land and water. Hence, Article 10 leads to the exclusion of interim storage from the scope of Article 9.

Furthermore, the Guidelines on the environmentally sound interim storage of mercury other than waste mercury adopted by COP2 include text on releases (Section IV, point B(31)).

***Article 11 on mercury waste***

Article 11(3)(a) on mercury waste refers to ‘environmental sound management’, which implies controlling/preventing releases of mercury and mercury compounds. Hence, Article 11 leads to the exclusion from Article 9 of waste treatment activities falling within the scope of Article 11 but does not lead to exclusion from Article 9 of waste not falling within the scope of Article 11.

***Article 12 on contaminated sites***

Article 12(2) on contaminated sites refers to ‘environmental sound management’, which implies controlling/preventing releases of mercury and mercury compounds. Furthermore, contaminated sites are generally considered as diffuse sources rather than point sources. Hence, Article 12 leads to the exclusion of contaminated sites from Article 9.

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