



# OVERVIEW OF KEY OPERATIONAL ARTICLES UNDER THE MINAMATA CONVENTION ON MERCURY

## ABOUT THIS DOCUMENT

This document has been developed to provide an overview of key operational articles under the Minamata Convention on Mercury. It is not intended to interpret nor to substitute the adopted text of the Convention, but rather aims at assisting countries and other stakeholders involved in preparing for ratification and implementation of the Convention by giving them a rapid outline of some of its main obligations.

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## ARTICLE 3 - MERCURY SUPPLY SOURCES AND TRADE

Article 3 of the Minamata Convention addresses sources of supply and trade in mercury, laying down measures on primary mercury mining, stocks of mercury or mercury compounds, excess mercury from the decommissioning of chlor-alkali plants as well as on mercury export and import.

### DEFINITION AND SCOPE

While Article 2 of the Convention contains definitions of mercury and mercury compounds, Article 3 has a narrower focus and only addresses mercury and mercury compounds as listed in paragraph 1 of that Article.

The Article also does not cover "quantities of mercury or mercury compounds to be used for laboratory-scale research or as a reference standard", "naturally occurring trace quantities of mercury or mercury compounds present in such products as non-mercury metals, ores, or mineral products, including coal, or products derived from these materials, and unintentional trace quantities in chemical products" ; and "mercury-added products" (paragraph 2).

### PRIMARY MERCURY MINING

Primary mercury mining is defined under Article 2 of the Convention as "mining in which the principal material sought is mercury" (Article 2(i)).

In application of Article 3, a Party shall not allow primary mercury mining that was not being conducted at the date of entry into force of the Convention for it, and shall only allow primary mercury mining that was being conducted at that date for a period of up to 15 years (paragraphs 3 and 4). During this period, mercury from such mining can only be :

- used in manufacturing of mercury added products in accordance with Article 4,
- used in manufacturing processes in accordance with Article 5, or
- disposed of in an environmentally sound manner as per Article 11, using operations which do not lead to recovery, recycling, reclamation, direct re-use or alternative uses.

Mercury from primary mining cannot be used for other purposes, including for artisanal and small-scale gold mining or processing.

### MERCURY STOCKS AND SUPPLY SOURCES

Under Article 3, each Party shall endeavour to identify individual stocks of mercury or mercury compounds exceeding 50 metric tons, within its territory, as well as sources of supply that generate annual stocks exceeding 10 metric tons (paragraph 5 (a)).

### EXCESS MERCURY FROM THE DECOMMISSIONING OF CHLOR-ALKALI FACILITIES

As per Article 5 and Annex B of the Convention, mercury cell chlor-alkali facilities will have to be phased out by 2025. Decommissioning these facilities will generate large quantities of mercury.

Article 3 specifies that where Parties determine that excess mercury from the decommissioning of chlor-alkali facilities is available, they shall take measures to ensure that such mercury is disposed of in an environmentally sound manner in accordance with Article 11 and using operations that do not lead to recovery, recycling, reclamation, direct re-use or alternative uses (paragraph 5 (b)).



## TRADE OF MERCURY

Export and import controls are one of the main instruments to reduce supply and trade of mercury.

Article 3 requires Parties to take measures to control trade of mercury with other Parties as well as with non-Parties (*paragraphs 6 to 10*). The measures required reflect several key principles, namely:

- mercury to be traded must not be from sources not allowed (under Paragraphs 3 or 5(b) of Article 3);
- the consent of the importing country, regardless of whether it is a Party or non-Party, must be obtained before an export ;
- trade with non-Parties is allowed, provided the non-Party can provide certification that it has certain measures in place equivalent to those required of a Party.

### **Export to a Party or non-Party**

A Party shall not allow the export of mercury, except:

- (1) To a Party that has provided written consent to it, and only for the purpose of:
  - A use allowed to the importing Party under the Convention ; or
  - Environmentally sound interim storage as set out in Article 10 ;
- (2) To a non-Party that has provided written consent to it, including certification demonstrating that:
  - The non-Party has measures in place to ensure the protection of human health and the environment and to ensure its compliance with Articles 10 and 11 ; and
  - Such mercury will be used only for a use allowed or for environmentally sound interim storage as set out in Article 10 (*paragraph 6*).

### **Import from a non-Party**

A Party shall not allow the import of mercury from a non-Party unless it provides the non-Party with its written consent and is provided by the non-Party with certification that the mercury is not from sources identified as not allowed under Article 3, namely primary mercury mining or excess mercury from the decommissioning of chlor-alkali facilities (*paragraph 8*).

### **General notification of consent**

A Party or non-Party has the option of providing to the Secretariat a general notification of consent to import, rather than consenting on a case by case basis directly to the exporter. The general notification must set out any terms and conditions of its consent. The Secretariat shall keep a public register of all such general notifications. Exporting Parties may use this general notification to fulfil the requirement for written consent. The notification can be revoked at any time by the Party or non-Party (*paragraph 7*).

If a Party that has provided a general notification of consent wishes to import from a non-Party, it may be exempted from seeking the certification that is required from the non-Party, provided that the Party maintains comprehensive restrictions on the export of mercury and has domestic measures in place to ensure environmentally sound management of any imported mercury. If it decides to make use of such procedure, the Party must notify the Secretariat of the decision, and include in its notification information describing its export restrictions, domestic regulatory measures, as well as information on the quantities and countries of origin of mercury imported from non-Parties (*paragraph 9*).

This procedure shall be available until the conclusion of the second meeting of the Conference of the Parties (COP). After that time, it shall cease to be available, unless the COP decides otherwise by simple majority of the Parties present and voting, except with respect to a Party that has provided a notification under paragraph 9 before the end of the second meeting of the COP (*paragraph 10*).



The Secretariat will maintain a public register of all such notifications, and the Implementation and Compliance Committee is to review and evaluate such notifications and supporting information in accordance with Article 15 and may make recommendations, as appropriate, to the COP (*paragraphs 9 and 10*).

## REPORTING REQUIREMENTS

Each Party shall include in its reports submitted pursuant to Article 21 (*reporting*) information showing that the requirements of Article 3 have been met (*paragraph 11*).

Amongst others, an implication of the requirements laid down in relation to primary mercury mining (*paragraph 3*) and to excess mercury from the decommissioning of chlor-alkali facilities (*paragraph 5 (b)*) is that a Party, in order to meet its reporting obligations, will need to assess the quantities of mercury that may come from these two sources as well as the quantities that may come from the other sources available within its territory.

## CONFERENCE OF THE PARTIES (COP)

At its first meeting, the COP is required to provide further guidance in a number of areas of Article 3, particularly in regard to identification of stocks and sources of supply, and to trade with Parties and non-Parties. The COP shall also develop and adopt at its first meeting the required content of the certification to be provided by non-Parties (*paragraph 12*).

Although “mercury compounds” are defined in paragraph 1 (b) of Article 3, the measures set out in Article 3 in particular in relation to trade refer only to “mercury” as defined in paragraph 1 (a). However, the COP shall evaluate whether the trade in specific mercury compounds compromises the objective of the Convention and consider whether specific mercury compounds should be made subject to paragraphs 6 and 8 (*paragraph 13*).

*At its seventh session, the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury adopted, on a provisional basis, guidance on the identification of stocks and sources of mercury supply, as well as guidance on completing the forms to be used for export and import of mercury under the Convention.*

*These guidance documents, which may be found at: [www.mercuryconvention.org](http://www.mercuryconvention.org), will assist Parties during the interim period between entry into force and the first meeting of the Conference of the Parties, where it is anticipated they will be formally adopted.*



## ARTICLE 4 - MERCURY-ADDED PRODUCTS

The Minamata Convention on Mercury focuses on the supply of mercury-added products through manufacture, import and export of such products rather than on their use, which may therefore continue until the end of their lifetime. In its Article 4, the Convention employs two approaches to controlling mercury in products, namely setting a phase-out date for some, and specifying measures to be taken in allowing continued use for others.

### DEFINITION

For the purpose of the Convention, “mercury-added product” means “a product or product component that contains mercury or a mercury compound that was intentionally added” (Article 2(f)).

### PHASING OUT OF MERCURY-ADDED PRODUCTS

For the products listed in Part I of Annex A, the Convention specifies a phase out date after which those products can no longer be manufactured, imported or exported, except when an exclusion is specified in Annex A or an exemption had been specifically requested by a Party pursuant to Article 6 (*Exemptions available to a Party upon request*). Although the date is referred to only by year, it is generally understood that the actual phase-out date is 31 December of that year. (*Article 4, paragraph 1*)

A Party may choose an alternative option (“*de minimis level*”), where it indicates, at the time of ratification or, in the case of an amendment to Part I of Annex A, upon entry into force of that amendment for it, that it will implement different measures or strategies to address the mercury-added products listed in Part I of Annex A. This option is only available if the Party can demonstrate that it has already reduced to a *de minimis level* the manufacture, import and export of the large majority of products listed, and that it has implemented measures or strategies to reduce the use of mercury in additional products not listed. A Party choosing this option has a number of obligations to meet that relate in particular to reporting and to measures or strategies to reduce the use of mercury. For the product category where this alternative is chosen, a Party is not eligible to claim any exemption under Article 6 (*Article 4, paragraph 2*).

Mercury-added products not listed in Part I of Annex A do not have a phase-out date under the Convention.

### EXEMPTIONS FROM THE PHASE OUT DATES AS PER ARTICLE 6

A State or regional economic integration organization can register for one or more exemptions from the phase out date (currently 2020) for mercury-added products listed in Part I of Annex A. They do so on becoming a Party, or in the case of a product that is added by amendment to the list, no later than the date upon which that amendment enters into force for it (*Article 6, paragraph 1*). Exemptions can be registered for a category (such as batteries) or a sub-category (such as a particular type of battery). The registration is made by notifying the Secretariat in writing, and must be accompanied by a statement explaining the need for the exemption (*Article 6, paragraphs 1 and 2*).

A Party may at any time withdraw an exemption upon written notification to the Secretariat (*Article 6, paragraph 7*).

Unless the Party has specifically requested a shorter exemption period, the exemption will expire 5 years after the phase out date indicated in Part I of Annex A – so for mercury-added products currently listed, exemptions would expire in 2025 (*Article 6, paragraph 5*). At the request of a Party, the Conference of the Parties (COP) may decide to extend an exemption for an additional 5 years (or a shorter period if so



requested), taking into account a number of key elements, including the need for such an extension of the exemption, the availability of alternatives and the activities planned or undertaken by the Party for environmentally sound storage of mercury and disposal of mercury wastes. Such an extension may only be given once, per product, per phase-out date (*Article 6, paragraph 6*).

It is important to note that:

- Registrations for exemptions have to be done on becoming a Party, or, in the case where a product is added to the list in Part I of Annex A, no later than the date upon which the related amendment enters into force for the Party (*Article 6, paragraph 1*).
- No new request for exemptions can be made once 5 years have elapsed after the phase-out date specified in Annex A, unless one or more Parties are still registered for an exemption and have received an extension for the particular product considered (*Article 6, paragraph 8*).
- No Party may have an exemption in effect 10 years after the phase out date currently indicated in Part I of Annex A. This means that for products currently listed in Part I of Annex A, no exemptions will apply after 2030 (*Article 6, paragraph 9*).

### PHASING DOWN OF MERCURY-ADDED PRODUCTS

For the products listed in Part II of Annex A, there are no phase-out dates, but Parties are required to take measures set out in that Annex to phase down their use (*Article 4, paragraph 3*).

Currently there is only one mercury-added product - dental amalgam - that is listed for phase down. Part II of Annex A lists nine measures for phasing down the use of dental amalgam, from which a Party must select two or more. The measures implemented shall take into account the Party's domestic circumstances and relevant international guidance.

### OTHER MEASURES IN RELATION TO MERCURY-ADDED PRODUCTS

Other measures in relation to mercury-added products that a Party is required to take are:

- to prevent the incorporation into assembled products of mercury-added products, the manufacture, import and export of which are not allowed for it (*Article 4, paragraph 5*);
- to discourage the manufacture and distribution in commerce of mercury-added products unknown prior to the entry into force of the Convention for it, unless an assessment of the risks and benefits of the product demonstrates environmental or human health benefits (*Article 4, paragraph 6*).

In addition, a Party has the possibility to submit a proposal for listing a mercury-added product in either part of Annex A: it must include in its proposal information related to the availability, technical and economic feasibility, as well as the environmental and health risks and benefits of the non-mercury alternatives to that product (*Article 4, paragraph 7*).

### SECRETARIAT

With respect to the Convention's provisions on mercury-added products, the Secretariat will have the following main tasks:

- to receive notifications from Parties of their decisions to implement different measures or strategies to address products listed in Part I of Annex A ("de minimis level" alternative) (*Article 4, paragraph 2*);
- to collect and maintain information submitted by Parties on mercury-added products and their alternatives and make this information publicly available, together with any other relevant information submitted by Parties (*Article 4, paragraph 4*);
- to receive and make publicly available information from Parties with respect to mercury-added products not covered by a known use prior to the date of entry into force for them, including information on the environmental and human health risks and benefits of the products (*Article 4,*



paragraph 6) :

- to receive proposals from Parties for the listing of new mercury-added products in Annex A (*Article 4, paragraph 7*) ;
- to receive registrations for exemptions from the phase out dates as well as establish, maintain and make available to the public a register of those, that shall include the list of Parties that have one or more exemptions, the exemption(s) registered for each Party and their expiration date (*Article 6, paragraphs 1,3 and 4*).

### CONFERENCE OF THE PARTIES (COP)

Within 5 years after the date of entry into force of the Convention, Annex A will be reviewed by the COP which may consider amending it. Any amendment to Annex A will follow the process set out in Article 27 (*Adoption and amendment of annexes*). During this process the COP will take into account at least any proposals from Parties for adding mercury-added products to Annex A ; information provided by Parties on mercury-added products and their alternatives ; and the availability of mercury-free alternatives that are technical and economically feasible, taking into account the environmental and human health risks and benefits (*Article 4, paragraphs 8 and 9*).

As part of this review process, the COP will also review the progress and effectiveness of the measures taken by Parties that had chosen the "de minimis level" alternative and implemented different measures or strategies to address products listed in Part I of Annex A (*Article 4, paragraph 2*).

Finally the COP will decide on any request to extend exemptions from phase out dates (*Article 6, paragraph 6*).

*At its sixth session, the intergovernmental negotiating committee adopted, on a provisional basis pending the first meeting of the Conference of the Parties (COP1), a proposed format for the registration of exemptions for the products and processes listed in Part I of Annexes A and B.*

*This proposed format, which may be found in the report of that session available at [www.mercuryconvention.org/Negotiations/INC6/tabid/3563/Default.aspx](http://www.mercuryconvention.org/Negotiations/INC6/tabid/3563/Default.aspx), will assist parties registering an exemption before COP1.*



## ARTICLE 5 - MANUFACTURING PROCESSES IN WHICH MERCURY OR MERCURY COMPOUNDS ARE USED

Article 5 sets out measures either to phase out or to restrict existing manufacturing processes in which mercury or mercury compounds are used. It also does not allow the development of new facilities that would use manufacturing processes listed in Annex B and discourages the development of new manufacturing processes in which mercury or mercury compounds are intentionally used.

### SCOPE

Article 5 specifically excludes from its scope the processes using mercury-added products, the processes for manufacturing mercury-added products and those that process mercury-containing waste (Article 5, paragraph 1). These processes are covered under other provisions of the Convention, namely under Article 4 on mercury-added products and Article 11 on Mercury wastes.

### PHASE OUT OF MANUFACTURING PROCESSES IN WHICH MERCURY OR MERCURY COMPOUNDS ARE USED

Parties are to take appropriate measures to not allow the use of mercury or mercury compounds in the manufacturing processes listed in Part I of Annex B after the date specified in the annex for the individual processes, unless an exemption has been specifically requested pursuant to Article 6 (Exemptions available to a Party upon request) (Article 5, paragraph 2). Two known processes in which mercury or mercury compounds are used are currently listed and are therefore subject to a phase out date:

- Chlor-alkali production, with a phase-out date of 2025, and
- Acetaldehyde production in which mercury or mercury compounds are used as a catalyst, with a phase out date of 2018.

### EXEMPTIONS FROM THE PHASE OUT DATES AS PER ARTICLE 6

A State or regional economic integration organization can register for one or more exemptions from the phase out dates in Part I of Annex B. They do so on becoming a Party, or in the case of a process that is added by amendment to the list, no later than the date upon which that amendment enters into force for it (Article 6, paragraph 1). Exemptions can be registered for a listed category or an identified sub-category. The registration is made by notifying the Secretariat in writing, and must be accompanied by a statement explaining the Party's need for the exemption (Article 6, paragraphs 1 and 2).

A Party may notify the Secretariat at any time of its wish to withdraw an exemption (Article 6, paragraph 7).

Unless the Party has specifically requested a shorter exemption period, the exemption will expire 5 years after the phase out date listed (Article 6, paragraph 5). At the request of a Party, the Conference of the Parties (COP) may decide to extend an exemption for an additional 5 years (or a shorter period if so requested), taking into account a number of key elements, including the need for such exemption extension, the availability of alternatives and the activities planned or undertaken by the Party for environmentally sound storage of mercury and disposal of mercury wastes.



It is important to note that:

- Registrations for exemptions have to be done on becoming a Party, or, in the case where a process is added to the list in Part I of Annex B, no later than the date upon which the related amendment enters into force for the Party (*Article 6, paragraph 1*).
- No new request for exemptions can be made once 5 years have elapsed after the phase-out dates in Annex B, unless one or more Parties are still registered for an exemption and have received an extension for the particular process considered (*Article 6, paragraph 8*).
- If there is an extended exemption, the new request would expire 10 years after the phase-out date.
- No Party may have an exemption in effect 10 years after the phase out date currently indicated in Part I of Annex B (*Article 6, paragraph 9*).

### RESTRICTING THE USE OF MERCURY OR MERCURY COMPOUNDS IN MANUFACTURING PROCESSES

For the manufacturing processes listed in Part II of Annex B, there are no phase-out dates, but Parties are required to take measures to restrict the use of mercury or mercury compounds in the processes in accordance with the provisions set out in that Annex (*Article 5, paragraph 3*). Currently there are three processes listed in Part II, namely the production of :

- Vinyl chloride monomer,
- Sodium or potassium methylate or ethylate, and
- Polyurethane using mercury containing catalysts.

### OTHER REQUIREMENTS IN RELATION TO MANUFACTURING PROCESSES IN WHICH MERCURY OR MERCURY COMPOUNDS ARE USED

A Party with one or more facilities within its territory that use mercury or mercury compounds for processes listed in Annex B is required:

- to take measures to address emissions and releases of mercury or mercury compounds from those facilities ;
- to include in its reports submitted pursuant to Article 21 (*reporting*) information on the measures taken ; and
- to endeavour to identify such facilities and submit to the Secretariat, no later than 3 years after the date of entry into force of the Convention for it, information on their numbers and types, along with the estimated annual amount of mercury or mercury compounds they use. The Secretariat is requested to make this information publicly available (*Article 5, paragraph 5*).

It is important to note that a Party shall not allow the use of mercury or mercury compounds in processes listed in Annex B in facilities that did not exist before the entry into force of the Convention for it. There are no exemptions available for such facilities under the Convention (*Article 5, paragraph 6*).

Parties must in addition discourage the development of any facility that uses any other manufacturing processes in which mercury or mercury compounds are intentionally used that did not exist prior to the date of entry into force of the Convention. An exception would be when a Party can demonstrate to the satisfaction of the COP that this process provides significant environmental and health benefits and that there are no technically and economically feasible mercury-free alternatives available providing such benefits (*Article 5, paragraph 7*).

A Party has the possibility to submit proposals for listing a process in either parts of Annex B: it must include in its proposal information on the availability, technical and economic feasibility, as well as the environmental and health risks and benefits of the non-mercury alternative to that process (*Article 5, paragraph 9*).

Parties are encouraged to exchange information on a number of areas in relation to the manufacturing processes listed in Annex B (*Article 5, paragraph 8*).



## SECRETARIAT

With respect to the Convention's provisions on manufacturing processes that use mercury or mercury compounds, the Secretariat will have the following main tasks:

- to collect and maintain information provided by Parties on processes that use mercury or mercury compounds and their alternatives and make this information publicly available, together with any other relevant information submitted by Parties (*Article 5, paragraph 4*) ;
- to make publicly available information submitted by Parties with regard to the facilities identified within their territories that use mercury or mercury compounds for processes listed in Annex B (*Article 5, paragraph 5(c)*) ;
- to receive registrations for exemptions from the phase out dates as well as establish, maintain and make available to the public a register of exemptions, that shall include the list of Parties that have one or more exemptions, the exemption (s) registered and their expiration date (*Article 6, paragraphs 1, 3 and 4*).

## CONFERENCE OF THE PARTIES (COP)

Within 5 years after the date of entry into force of the Convention, Annex B will be reviewed by the COP which may consider amending it. Any amendment of Annex B will follow the process set out in Article 27 (*Adoption and amendment of annexes*). During this process the COP will take into account at least any proposals from Parties for adding processes to Annex B ; information provided by Parties on manufacturing processes that use mercury or mercury compounds, their alternatives and any other relevant information ; and the availability of mercury-free alternatives that are technical and economically feasible, taking into account the environmental and human health risks and benefits (*Article 5, paragraphs 10 and 11*).

The COP will also assess whether any proposal for a new facility using any other manufacturing process in which mercury or mercury compounds are intentionally used demonstrates significant environmental and health benefits and that there are no technically and economically feasible mercury-free alternatives available providing such alternatives (*Article 5, paragraph 7*).

Finally the COP will decide on any request to extend exemptions from phase out dates (*Article 6, paragraph 6*).

*At its sixth session, the intergovernmental negotiating committee had adopted, on a provisional basis pending the first meeting of the Conference of the Parties (COP1), a proposed format for the registration of exemptions for the products and processes listed in Part I of Annexes A and B.*

*This proposed format, which may be found in the report of that session available at [www.mercuryconvention.org/Negotiations/INC6/tabid/3563/Default.aspx](http://www.mercuryconvention.org/Negotiations/INC6/tabid/3563/Default.aspx), will assist parties registering an exemption before COP1.*



## ARTICLE 7 - ARTISANAL AND SMALL-SCALE GOLD MINING

*Artisanal and small-scale gold mining and processing in which mercury is used is a centuries old activity which has complex social, environment and economic dimensions and is one of the largest mercury-using sectors and source of emissions to the environment. It is not regulated under Article 5 (Manufacturing processes in which mercury or mercury compounds are used) but rather in a dedicated Article 7, which establishes the measures to be taken by Parties where this activity is undertaken.*

### DEFINITION AND SCOPE

Article 2 of the Convention defines artisanal and small-scale gold mining as "gold mining conducted by individual miners or small enterprises with limited capital investment and production" (Article 2 (a)). However, the provisions of Article 7 and its associated Annex C only apply to artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore (Article 7, paragraph 1).

### OBLIGATIONS FOR PARTIES WITH ARTISANAL AND SMALL-SCALE GOLD MINING AND PROCESSING

The use of mercury or mercury compounds in artisanal and small-scale gold mining in accordance with the provisions of Article 7 is considered a "use allowed" under the Convention (Article 2 (k)).

Each Party that has artisanal and small-scale gold mining and processing within its territory, independently of its importance, has the general obligation to take steps to reduce, and where feasible eliminate, the use of mercury and mercury compounds in such mining and processing, as well as the emissions and releases to the environment of mercury from such activities (paragraph 2).

In addition, if at any time it determines that artisanal and small-scale gold mining and processing in its territory is more than insignificant, the Party shall notify the Secretariat and:

- develop and implement a national action plan in accordance with Annex C ;
- submit this plan to the Secretariat within 3 years of either entry into force of the Convention for it, or of its notification to the Secretariat, whichever is later ; and
- provide a review every 3 years of the progress made and include such reviews in its reports pursuant to Article 21 (reporting) (Article 7, paragraph 3).

How to determine "more than insignificant" with respect to artisanal and small-scale gold mining and processing is not defined or quantified in the Convention. The onus is therefore on each Party to make the decision on whether such activities are more than insignificant within its territory. A number of elements have been suggested that could be considered by countries to make such a determination. These range from the quantities of mercury used and released through such processes, the amount of gold produced, its contribution to gross domestic product, the number of people involved and affected, the location of the activity, the sensitivity of the surrounding environment, the practices employed, etc.

### CONTENT OF THE NATIONAL ACTION PLAN (ANNEX C)

Annex C lists the elements that must be included in the national action plan. In brief these relate to:

- National objectives and reduction targets ;
- Actions to eliminate ;
- Steps to facilitate the formalization or regulation of the sector ;
- Baseline estimates of the quantities of mercury used and the practices employed ;



- Strategies for :
  - promoting the reduction of emissions, releases of mercury and exposure to it ;
  - managing the trade and preventing the diversion of mercury and mercury compounds for use in artisanal and small scale gold mining and processing ;
  - the involvement of stakeholders ;
  - public health, with a strategy encompassing health surveillance, health care worker training and awareness raising ;
  - preventing exposure of vulnerable populations ;
  - providing information to artisanal and small-scale gold miners and affected communities (paragraphs 1 (e) to (j))
- A schedule for implementation of the national action plan.

Annex C also specifies that a Party may include additional strategies to achieve its objectives, and mentions in particular standards for mercury free artisanal and small-scale gold mining, as well as market based mechanisms or marketing tools.

#### COOPERATION WITH PARTIES, RELEVANT INTERGOVERNMENTAL ORGANIZATIONS AND OTHER ENTITIES

Article 7 suggests a number of areas where Parties may cooperate with each other, with relevant intergovernmental organizations and with other entities. Areas covered include strategies to manage trade and prevent mercury or mercury compounds diversion, education, outreach and capacity building initiatives, research into sustainable non-mercury alternative practices, the provision of technical and financial assistance, partnerships to assist implementation and the use of existing information exchange systems (Article 7, paragraphs 4 (a) to (f)).

*At its seventh session, the intergovernmental negotiating committee agreed to the provisional use of draft guidance on developing a national action plan to reduce and, where feasible, eliminate mercury use in artisanal and small-scale gold mining as contained in document UNEP(DTIE)/Hg/INC.7/17 available at [www.mercuryconvention.org/Negotiations/INC7/tabid/4506/Default.aspx](http://www.mercuryconvention.org/Negotiations/INC7/tabid/4506/Default.aspx).*

*Until the first meeting of the Conference of the Parties (COP1), countries are encouraged to make use of this draft guidance when preparing their national action plans on artisanal and small-scale gold mining.*

*This draft guidance will be improved further to the comments that will be received from Governments and other stakeholders with a view to presenting a revised version for consideration at COP1.*



## ARTICLE 8 - EMISSIONS

Article 8 aims at controlling and, where feasible, reducing emissions of mercury and mercury compounds to the atmosphere, through measures to control emissions from the point sources listed in Annex D. The Article differentiates between measures required for new sources and those required for existing sources. Releases to land and water are not addressed in Article 8 – they are addressed in Article 9 of the Convention.

### IDENTIFICATION OF RELEVANT SOURCES

A Party with relevant sources is required to take measures to control emissions of mercury and mercury compounds to the atmosphere from such sources (*paragraph 3*).

The first task for a Party is therefore to identify whether it has "relevant sources" within its territory, i.e. one or more of the sources falling within the source categories listed in Annex D, which are:

- Coal-fired power plants,
- Coal-fired industrial boilers,
- Smelting and roasting processes used in the production of non-ferrous metals<sup>1</sup>,
- Waste incineration facilities,
- Cement clinker production facilities.

It should be noted that it is not necessary for all sources to be identified as "relevant". A Party may choose to establish criteria to identify the sources covered within a source category listed in Annex D, provided that the criteria for any category are formulated in such a way as to ensure that at least 75% of the emissions from that category are included (*paragraph 2 (b)*). The Conference of the Parties (COP) is to provide guidance on the development of such criteria (*paragraph 9 (a)*).

### NATIONAL PLAN

While not an obligation, a Party may prepare a national plan setting out the measures and expected targets, goals and outcomes. If a national plan is developed it must be submitted to the Conference of the Parties within 4 years of becoming a Party. The national plan on emissions may be included as part of any overall implementation plan that may be prepared under Article 20 (*implementation plans*) (*paragraph 3*).

### DIFFERENTIATED MEASURES FOR NEW AND EXISTING SOURCES

Article 8 recognizes that measures for existing and new sources can be different. In particular, the application of best available techniques and best environmental practices (BAT/BEP) is required for new sources, but is only one of the measures that may be applied to existing sources.

A new source is defined as any relevant source within a category listed in Annex D, the construction or substantial modification of which is commenced at least one year after the date of entry into force for the Party concerned of the Convention or of an amendment to annex D for an additional source category (*paragraph 2(c)*). Substantial modification means a change to a relevant source that results in a significant increase in emissions. It is for the Party to decide whether a modification is substantial or not (*paragraph 2(d)*).

Definitions of best available techniques and best environmental practices are contained in Article 2 paragraphs (b) and (c). It is important to note that the definition provides flexibility to the Party in identifying the best technology that is available to it, taking into account its particular circumstances. The Conference of

<sup>1</sup> For the purpose of Annex D, "non-ferrous metals" refers to lead, zinc, copper and industrial gold.



the Parties will adopt guidance on BAT/BEP at its first meeting (*paragraph 8*).

**For new sources**, each Party shall require the use of BAT/BEP as soon as practicable, but no later than 5 years after entry into force of the Convention for it. Emission limit values that are consistent with the application of BAT may be used (*paragraph 4*).

**For existing sources**, each Party shall implement, as soon as practicable, but no later than 10 years after the date of entry into force of the Convention for it, one or more of the following measures :

- A quantified goal,
- Emission limit values,
- Best available techniques and best environmental practices,
- A multi-pollutant control strategy that would deliver co-benefits for control of mercury emissions, or
- Alternative measures to reduce emissions from relevant sources.

In selecting and implementing an approach, a Party takes into account its national circumstances, as well as the economic and technical feasibility and affordability of the measures (*paragraph 5*).

The same measures may be applied to all relevant existing sources, or differ between source categories. The objective is that the control measures under the approach chosen achieve reasonable progress in reducing emissions over time (*paragraph 6*).

## INVENTORIES

The Convention requires each Party to establish an inventory of emissions from relevant sources. This inventory should be established as soon as practicable, but no later than 5 years after the date of entry into force of the Convention for it (*paragraph 7*). Each Party is then required to maintain the inventory and include this information in its reporting to the COP (*paragraphs 7 and 11*). The COP will adopt guidance on the methodology for preparing inventories of emissions (*paragraph 9 (b)*).

## REPORTING

A Party is required to submit information on the implementation of Article 8 in its report to the COP under Article 21 (*reporting*). In particular it should include information concerning the measures it has taken for new and existing sources and its inventory, as well as the effectiveness of these measures (*paragraph 11*).

## CONFERENCE OF THE PARTIES (COP)

The Conference of the Parties has several specific responsibilities with respect to Article 8, in particular the adoption of guidance on BAT/BEP, on support for Parties in implementing the measures for existing sources (in particular in determining goals and setting emission limit values), on criteria for identifying sources, and on inventory methodology. The first two sets of guidance are to be adopted at its first meeting, and the others as soon as is practicable (*paragraphs 8 and 9*).

*At its seventh session, the intergovernmental negotiating committee adopted, on a provisional basis pending the first meeting of the Conference of the Parties, guidance related to emissions of mercury, including on best available techniques and best environmental practices, as well as other required guidance on the implementation of measures for existing facilities, the development of criteria in defining relevant sources and the preparation of inventories of emissions. These guidance may be found at [www.mercuryconvention.org/](http://www.mercuryconvention.org/)*



## ARTICLE 9 - RELEASES

While Article 8 addresses emissions of mercury and mercury compounds to the atmosphere, Article 9 deals with their releases to land and water from significant anthropogenic point sources that are not addressed in other provisions of the Convention. The approach differs from that in Article 8 in that the sources of releases are not identified: it is the Party's responsibility to identify the categories of relevant point sources of releases.

### IDENTIFICATION OF RELEVANT SOURCES

The first task for a Party is therefore to identify whether it has relevant sources of releases, which for the purposes of Article 9 are defined as any significant anthropogenic point source of release that is not addressed in other provisions of the Convention (*paragraph 2 (b)*). Hence sources such as manufacturing processes in which mercury or mercury compounds are used (addressed in Article 5), or releases from artisanal and small scale gold mining and processing (addressed in Article 7) would not be considered "relevant sources" under Article 9.

### MEASURES TO BE TAKEN FOR RELEVANT SOURCES

A Party must identify relevant point source categories no later than 3 years after the date of entry into force of the Convention for it, and regularly thereafter (*paragraph 3*). A Party with relevant sources is required to take measures to control releases of mercury and mercury compounds to land and water from these sources (*paragraph 4*). For both new and existing sources, a Party must include in its measures taken one or more of the following approaches, as appropriate:

- Release limit values,
- Best available techniques and best environmental practices (BAT/BEP),
- A multi-pollutant strategy that would deliver co-benefits for control of mercury releases,
- Alternative measures to reduce releases from the identified relevant sources (*paragraph 5*).

### NATIONAL PLAN

While not an obligation, a Party may prepare a national plan setting out the measures and expected targets, goals and outcomes. If a national plan is developed it must be submitted to the Conference of the Parties (COP) within 4 years of becoming a Party. Such a national plan on releases may be included in any overall implementation plan that may be prepared under Article 20 (*implementation plans*) (*paragraph 4*).

### INVENTORIES

The Convention requires each Party to establish an inventory of releases to land and water from relevant sources, as soon as practicable and no later than 5 years after the date of entry into force of the Convention for it (*paragraph 6*). Each Party is then required to maintain the inventory and include this information in its reporting to the COP (*paragraphs 6 and 8*). The COP will adopt guidance on the methodology for preparing inventories of releases (*paragraph 7*).

### REPORTING

A Party is required to include information on its implementation of Article 9 in its report to the COP under Article 21 (*reporting*). The information should include, in particular, details of any relevant point source categories it has identified, the measures it has taken and its inventory of releases from relevant sources, as well as the effectiveness of the measures (*paragraph 8*).



### CONFERENCE OF THE PARTIES (COP)

The Conference of the Parties has several specific responsibilities with respect to this Article, in particular the adoption as soon as practicable of guidance on BAT/BEP and on inventory methodology (*paragraph 7*).



## ARTICLE 10 - ENVIRONMENTALLY SOUND INTERIM STORAGE OF MERCURY, OTHER THAN WASTE MERCURY

Article 10 addresses the interim storage of mercury and mercury compounds as defined in Article 3 on Mercury supply sources and trade and which do not fall within the meaning of mercury wastes as set out in Article 11 on Mercury wastes (paragraph 1).

### KEY IMPLEMENTATION MEASURES FOR PARTIES

Parties are requested to take measures to ensure that mercury and mercury compounds that are intended for a use allowed under the Convention are stored in an environmentally sound manner, taking into account any guidelines and in accordance with any requirements that the Conference of Parties (COP) adopts (paragraph 2).

Article 10 also introduces a requirement to build cooperation, as appropriate, to enhance capacity-building for the environmentally sound interim storage of mercury and mercury compounds intended for a use allowed. Parties may take this opportunity to build and strengthen cooperation with each other, as well as other relevant intergovernmental organizations and other entities (paragraph 4).

### CONFERENCE OF THE PARTIES (COP)

The Conference of the Parties is required to adopt guidelines on the environmentally sound interim storage of mercury and mercury compounds intended for a use allowed and in doing so take into account any relevant guidelines developed under the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal and other relevant guidance (paragraph 3).

The COP may also decide to adopt requirements for interim storage in an additional annex. Such adoption would be done following the process set out in Article 27 (*Adoption and amendment of annexes*) (paragraph 3).



## ARTICLE 11 - MERCURY WASTES

Article 11 addresses the issue of mercury wastes, their management in an environmentally sound manner and transportation across international boundaries. In doing so, it recognizes the strong relationship on this issue between the Minamata Convention and the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal.

### DEFINITIONS AND SCOPE

Article 11 first refers to the relevant definitions of the Basel Convention, which shall apply for Parties to the latter and serve as a guidance to its non-Parties (*paragraph 1*).

It then clarifies what shall be understood as mercury wastes, which it defines for the purposes of the Convention as substances or objects:

- Consisting of mercury or mercury compounds ;
- Containing mercury or mercury compounds ; or
- Contaminated with mercury or mercury compounds,

in a quantity above relevant thresholds, that are disposed of or are intended to be disposed of or are required to be disposed of by the provisions of national law or the Convention.

The referred-to thresholds are to be defined by the Conference of the Parties (COP) in collaboration with the relevant bodies of the Basel Convention in a harmonised manner. The definition of mercury wastes excludes overburden, waste rock and tailings from mining, except from primary mercury mining, unless they contain mercury or mercury compounds above thresholds defined by the Conference of the Parties (*paragraph 2*).

### KEY IMPLEMENTATION MEASURES FOR PARTIES

Under Article 11, a Party is required to take a series of measures to ensure that mercury waste is:

- managed in an environmentally sound manner, taking into account the guidelines developed under the Basel Convention and in accordance with requirements the COP shall adopt,
- only recovered, recycled, reclaimed or directly re-used for a use allowed to a Party under the Convention or for environmentally sound disposal,
- for Parties to the Basel Convention only transported across international boundaries for environmentally sound disposal in line with Article 11 and with the Basel Convention. Where the Basel Convention does not apply to transport across international boundaries, Parties shall only allow such transport after taking into account relevant international rules, standards and guidelines (*paragraph 3*).

The Article also encourages cooperation between Parties, intergovernmental organizations and other entities, to develop and maintain global, regional and national capacity for managing mercury wastes in an environmentally sound manner (*paragraph 5*).

### CONFERENCE OF THE PARTIES (COP)

The Conference of the Parties has a number of responsibilities in the framework of Article 11, that relate in particular to the definition of thresholds referred to in the definition of mercury wastes (*paragraph 2*), to the adoption of requirements on environmentally sound management of mercury wastes (*paragraph 3 (a)*), as well as to the cooperation that it shall seek with the relevant bodies of the Basel Convention in the review and update of the guidelines developed under the latter Convention (*paragraph 4*).



## ARTICLE 12 - CONTAMINATED SITES

Article 12 addresses the issue of sites contaminated by mercury or mercury compounds. While not requiring the remediation of such contaminated sites, Article 12 obliges Parties to take a number of measures when acting to reduce their risks and requires the Conference of the Parties to develop guidance on their management. It also encourages the identification and assessment of such sites as well as cooperation.

### KEY IMPLEMENTATION MEASURES FOR PARTIES

The Convention requires each Party to endeavour to develop appropriate strategies to identify and assess sites contaminated by mercury or mercury compounds (*paragraph 1*).

When taking action to reduce the risks posed by sites contaminated by mercury or mercury compounds, each Party is required to ensure that:

- actions are performed in an environmentally sound manner, and
- actions incorporate, where appropriate, an assessment of the risks to human health and the environment from mercury or mercury compounds contained in these sites (*paragraph 2*).

The Article also encourages Parties to cooperate in developing strategies and implementing activities for identifying, assessing, prioritizing, managing and remediating, as appropriate, contaminated sites (*paragraph 4*).

### CONFERENCE OF THE PARTIES (COP)

The Conference of the Parties is requested under Article 12 to adopt guidance on managing contaminated sites, which may include methods and approaches for site identification and characterization, engaging the public, human health and environmental risk assessment, options for managing risks posed by contaminated sites, evaluation of benefits and costs and validation of outcomes (*paragraph 3*).