

**Submitting party or organization:** U.S. Government

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## **U.S. Comments on Draft Report on the work of the ad hoc technical group on effectiveness evaluation**

We very much appreciate the efforts of the ad hoc technical expert group (TEG) in developing the Effectiveness Evaluation framework, and associated monitoring arrangements, information flows, and the reports upon which the Effectiveness Evaluation Committee (EEC) will base its considerations of the effectiveness of the Convention for presentation to the Conference of the Parties. The report lays out a detailed process to gather and analyze a broad set of information, incorporating process, outcome, and monitoring indicators to evaluate the effectiveness of the Convention, and reflects prior comments from Parties and discussion at COP-2.

### **1. Overall Purpose of the Evaluation**

We were pleased to see the evaluation organized by key policy questions, which will enable the EEC to structure the evaluation and express the results clearly to policymakers and the public. We are concerned that the current language of Policy Question #4 (paragraph 18) sets up a subjective measurement of effectiveness for the Convention and is inappropriately forward-looking. It is the role of the COP, rather than the EEC, to determine if the current measures under the Convention are adequately addressing mercury pollution, and inappropriate for this prescriptive question to be addressed by the EEC. Both concerns can be avoided with a more objective formulation: “To what extent are existing measures under the Minamata Convention meeting its objectives of promoting human health and the environment?”

### **2. Indicators**

Overall, the Article-by-Article approach is a useful organizational construct for the indicators. We do not however, understand that organizing indicators by Articles requires the development of an indicator for every article.

As the First and Second Policy Questions either track, or are directly linked to actions mandated by the Convention, in our view their indicators should be directly linked to legal obligations under the Convention. Further, to enable interpretability of the results, we should limit the indicators to those for which the direction of association with reduced emissions and releases is clear. We are concerned that some of the indicators presented in the report do not currently meet this standard.

For example, while Article 22 (items a-d of paragraph 3) mentions the use of additional information sources for the evaluation, these information sources are not directly linked to the legal obligations of the Convention and/or do not provide a clear rationale for how they correspond to Policy Questions 1 and 2. While useful, these elements are appropriately reflected as separate, individual reports in the box table presented on page 28, and we do not see the need to develop additional indicators on their basis. Additionally, we find indicator K1 to be problematic, as it prejudices the outcome of the evaluation. It could be interpreted to imply that, absent recommendations for change from the effectiveness evaluation process, the Convention is

ineffective. We are also concerned that maintaining indicator K1 risks substituting the EEC’s judgment for that of the COP. For example, if the COP disagrees with an EEC recommendation and takes no action to implement it, why should that translate into a negative indicator?

Overall, the proposed approach envisions a broader purpose for the evaluation than called for in Article 22. Article 22 is not intended, and should not be seen, as the mechanism by which the COP is to make determinations regarding improvement of the Convention.

### 3. Process

This second iteration of the report has made significant advances on the framework, data sources, and timeline for the effectiveness evaluation. We look forward to discussion on the remaining elements of the overall process, including clarification of roles and terms of reference for the Scientific and Technical Group and the Integrated Assessment Group; the expertise and process associated with the production of the reports on Emissions and Releases, Trade, Supply, and Demand, and Waste Management; and refinements to the draft terms of reference of the global monitoring arrangements and EEC; as well as the scope of the Global Monitoring Report.

Detailed line comments follow.

Line Number	Comments
46	We are concerned that the current phrasing of this policy question is both subjective, and prospective in nature. Article 22 does not call for the evaluation to determine whether existing measures under the Convention are “sufficient.” Moreover, it would be role of the COP, rather than the Effectiveness Evaluation Committee (EEC) to address such an issue and potentially consider corresponding updates to the Convention. To resolve these concerns, we recommend Policy Question 4 instead be worded as: “To what extent are existing measures under the Minamata Convention meeting its objective of protecting human health and the environment from mercury?”
63-65	Our view is that the information in clusters E, F, H, I and J may contribute to the Effectiveness Evaluation, without being included as indicators: While the support and information and research cluster may be useful for the Effectiveness Evaluation, they need not be indicators. See further comments on lines 467-535 below.
106	In our view, “deriving conclusions” regarding the effectiveness of the Convention is the purview of the COP, rather than the EE committee.
295-304 (see also in executive summary and paragraph 7 of Annex IV)	We are concerned about the subjective nature of the current phrasing of Policy Question #4. The current formulation both requires the EEC to establish a subjective measurement of “sufficient” which is not called for in the Convention, and presumes a quantitative understanding of how the “full potential” of Convention implementation will contribute to reduced anthropogenic emissions and releases. We cannot recommend evaluating the effectiveness of the Convention with respect to a value that cannot be estimated with certainty. A more objective formulation of this question would be “To what extent are existing measures under the Minamata Convention

	meeting its objectives of promoting human health and the environment?” Mentions of “significant” or “sufficient” as a standard should be removed. Additionally, in our view the current wording could be interpreted as a stepping-stone for future updates to the Convention, which would prejudge the outcome of each Effectiveness Evaluation.
456-460	In our view, “derive conclusions” should be struck, as this function is the purview of the COP, rather than the EEC.  Further, we request removal of the last sentence under “Level 5” (starting with “The Committee may also highlight...”). It is our view that the EEC should report the results of the Effectiveness Evaluation, and provide summary conclusions about the Convention’s effectiveness within a given evaluation cycle, but should not recommend changes to or strengthening of, Convention measures, as this is the purview of the COP.
463-464	Please remove the following language:  “The Conference makes its determinations regarding actions or mechanisms to improve the effectiveness of the Convention”.  In our view, this prejudices the response of the COP to the outcome of this, and future effectiveness evaluations.
467 – 535	While multiple sources of information can be used to inform the Effectiveness Evaluation (Article 22 paragraph 3), the indicators associated with Policy Questions 1 and 2 should only reflect obligations of the Convention that implement activities expected to reduce mercury emissions and releases. Other elements of Article 22 paragraph 3 (e.g. “financial assistance, technology transfer and capacity building arrangements”) are complementary sources of information, rather than direct indications of if the Convention is fulfilling its objectives.  Our view is that the information in the following clusters may contribute to the Effectiveness Evaluation, without being included as indicators: <ul style="list-style-type: none"> <li>• E (financial resources and mechanism)</li> <li>• F (Implementation and Compliance Committee)</li> <li>• H (information and research)</li> <li>• I (Implementation plans)</li> <li>• J (Reporting)</li> </ul>
522, indicator B3	Will the Global Mercury Trade, Supply, Demand report be reliably available in the future, and on a timescale aligned with the Minamata Convention EE cycle?
522 indicator B7	We suggest changing “number” to “number and proportion” of Parties trading in mercury, as well as track the volume of mercury being traded, if available. Both measures are intended to improve the correlation between the indicator and the outcome variables of reduced mercury emissions and releases.
522 indicator B9	Similarly, we suggest including “number” to “number and proportion” of Parties that have measures in place.

522 Notes (bottom of indicator cluster B)	In our view, this note is redundant and should be deleted, as data from non-Parties will necessarily be represented in indicators B3 and B6.
523 C4 and C7	We do not support the use of these indicators as a measure of the effectiveness of the Minamata Convention, because of the lack of an expected direction of association between this indicator and the Convention's objectives. Parties may seek exemptions for a variety of reasons, which may correspond with either increased or reduced emissions and releases. This information may be a useful complement to the Effectiveness Evaluation, but should not represent a stand-alone indicator.
523, indicator C2	This information is not easily gathered and compiled directly from industry stakeholders. If this is the only way the information can be gathered, we recommend deleting. If this information is to be gathered based on existing reports, please specify the reports to be used.
525, E cluster	We do not support the use of these indicators as a measure of the effectiveness of the Minamata Convention, both because of the lack of an expected direction of association between this indicator and the Convention's objectives, and because this indicator does not necessarily reflect the implementation of Convention obligations. This information may be a useful complement to the Effectiveness Evaluation, but should not represent a stand-alone indicator.
526, Indicator F1	We do not support the use of this indicator as a measure of the effectiveness of the Minamata Convention, because of the lack of an expected direction of association between this indicator and the Convention's objectives. The effectiveness of the ICC (as distinct from improved compliance) does not clearly associate with reductions in emissions and releases. This information may be a useful complement to the Effectiveness Evaluation, but should not represent a stand-alone indicator.
528, H Cluster	We do not support the use of these indicators as a measure of the effectiveness of the Minamata Convention, because of the lack of an expected direction of association with the Convention's objectives. These metrics contribute to an understanding of the overall quality of the data available on mercury and its effects and may be a useful complement to the Effectiveness Evaluation, but should not represent a stand-alone indicator.
529, Indicator I1	We do not support the use of this indicator as a measure of the effectiveness of the Minamata Convention. The number of Parties voluntarily submitting implementation plans is not necessarily clearly and directly associated with reductions in emissions and releases.
530, J cluster	We do not support the use of these indicators as a measure of the effectiveness of the Minamata Convention. The timeliness of reporting, or completeness of reporting, are not necessarily clearly and directly associated with reductions in emissions and releases.
531: K1	We do not support the use of this indicator as a measure of the effectiveness of the Minamata Convention. Evidence of implementation of recommendations from effectiveness evaluation through decisions and actions of the Conference of the Parties is not necessarily clearly associated with reductions in emissions

	or releases. This indicator is also problematic as it implies that the COP's exercise of discretion with regard to implementing the EEC's recommendations affects the effectiveness of the Convention.
580: Table 4	It would be helpful if the specific monitoring indicators from Table 4 were referenced in the appropriate notes in Table 2 , for example in the notes to Cluster A and Cluster D.
730-734	<p>Delete: "..., and from that derive conclusions about the effectiveness of the Convention." (for the reasons explained above.)</p> <p>Delete: "The Effectiveness Evaluation Committee will formulate recommendations aiming at improving the effectiveness of the Convention."</p> <p>The EEC should report on what they found, indicating where the objective is being met and where it is not being met, without recommending changes to "improve" or change agreements within the Convention.</p> <p>Insert "Draft proposed" before "terms of reference."</p>
736-740	<p>Delete: "In this framework, the intention is for the Conference to consider the recommendations of the committee, and then make determinations about any needed changes or strengthening of Convention measures."</p> <p>The EEC should report the results of the Effectiveness Evaluation, and provide summary conclusions about the Convention's effectiveness within a given evaluation cycle, but should not recommend changes to or strengthening of, Convention measures, as this is the purview of the COP.</p>
773	While this initial Effectiveness Evaluation cycle has taken six years to develop, it is unclear to us why this should determine the length of future cycles. A slightly longer evaluation schedule (e.g. 10 years) that remained synced to the Conference of Party schedule would reduce costs, and enable significant improvements in the extent of implementation, data availability and monitoring between cycles.
Annex 1 1053-1067	This section of the report makes a number of recommendations, but it is not clear to whom. Clarification of roles and expectations would be helpful, noting that data that are not currently available should not be gathered by the COP, including the calls in lines 1061 and 1065 to "Fill geographical data gaps of information using manual active or passive sampling methods", and to "Conduct sampling on a least a quarterly basis..".

Annex 2 1208-1209	We were surprised to see that the terms of reference for the EEC (Annex II) includes specific participation of a representative from the Implementation and Compliance Committee. Similarly, we would not recommend having the expertise of the country representatives include "financial or technical assistance." It would be more helpful to focus the expertise of this expert on high-level analysis, such as represented by the other qualifications:
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	“evaluation, reporting and national implementation, or other expertise relevant to the evaluation.”
1212-1213	We understand that the conflicts-of-interest language here should align with corresponding language in the ICC ToR, the most recent draft of which states: “Members of the Committee shall serve objectively and in the best interests of the Convention.”
1219	Should “select” be “invite as observers”?
1229	In our view, it seems strange to use “shall” with regard to observers, who had no part in developing these ToRs. Should this sentence instead say “Observers are expected to provide...”?
1253-1257	As the budget is decided by the COP, we suggest replacing “shall” with “should, subject to COP approval,” or something along those lines.
Annex 3 1262-1266	Instead of the language in either bracket, we prefer “carry out tasks related to monitoring as identified in Levels 1, 2 and 3 of the proposed methodology for the effectiveness evaluation, including the preparation of a global monitoring report”. This more specifically outlines that these tasks refer to current paragraphs 25 – 29 in the Effectiveness Evaluation Framework.
1289	To clarify that the collection of these data will not be supported by Convention resources, please insert the term “supported separately from Convention resources” after “scientific activities”
1290-1294	As currently written, this appears to suggest that the expert group is responsible for “continuing existing monitoring activities”, when those activities are or should be, ongoing activities performed outside of Convention activities. Please insert “Such activities will be supported separately from Convention resources.”
1295-1297	To clarify that the collection of these data will not be supported by Convention resources, please insert the sentence “The collection of this data will not use Convention resources” after paragraph 6.
1405-1411	To avoid confusion and duplication, we recommend that the activities assigned to this group are laid out in one, and not two different documents. This would more specifically outline that these tasks refer to current paragraphs 25 – 29 in the Effectiveness Evaluation Framework. Correspondingly we would prefer that the subparagraphs a and b be deleted, and replaced with the words a. “carry out tasks related to monitoring as identified in Levels 1, 2 and 3 of the proposed methodology for the effectiveness evaluation, including the preparation of a global monitoring report”
1410-1422	We do not support the preparation of three separate documents on monitoring. Currently this ToR requests a global monitoring report, a separate guidance document, and a report on filling gaps. We believe these information can be presented in a single report. We recommend the deletion of paragraphs c, d, and e, and relocation of those information into the description of the Global Monitoring Report in current lines 1486-1490.
Annex IV 1461-1463	It would be preferable if the information streams described here (i. Submissions by Parties, and ii. scientific, and publicly available) could map onto the four information streams depicted in Diagram 2 (Reports from

	Minamata Processes, Submissions from Parties, Submission from others, and available monitoring data).
1486-1490	The description of the Global Monitoring Report should be expanded to encompass the monitoring guidance and gap identification elements outlined currently in lines 1412-1422, paragraphs c-e.
1534-1535	As described above, Policy Question 4 should be re-worded for clarity to: “To what extent are existing measures under the Minamata Convention meeting its objective of protecting human health and the environment from mercury?”