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## United Nations Environment Programme

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### Intergovernmental negotiating committee to prepare a global legally binding instrument on mercury

#### Fifth session

Geneva, 13–18 January 2013

Item 2 (b) of the provisional agenda\*

#### Organizational matters: organization of work

## Scenario note for the fifth session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury

### Note by the Chair

1. The present scenario note, which I have prepared in consultation with the Bureau, sets out our plans and general expectations for the fifth session of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury. I hope that it will assist parties and other participants in preparing for the session in such a way as to allow us to reach a successful conclusion, with the finalization of an ambitious text that best reflects the compromise and positive spirit that has prevailed throughout our negotiations.
2. I would like to stress that the Bureau has discussed the outcome of the fourth session and has agreed on the importance of making all possible efforts to fulfil our mandate at the fifth session, which we consider to be feasible.

### Timing and format of the fifth session

3. I draw your attention to the dates for the fifth session. We will open the session on Sunday, 13 January 2013, and close on Friday, 18 January 2013. The Bureau and I have concluded that six days will be required for the final session to ensure that we have sufficient time for negotiation and to allow the Legal Group to review the draft text prior to its adoption before the closure of the session.
4. The Bureau and I have further agreed that there will not be a technical briefing session prior to the fifth session in order to allow maximum time for negotiations, as well as for the holding of regional meetings and interregional discussions preceding the fifth session. Some displays relating to technical issues will be available in an exhibition area.
5. Delegates are invited to use the whole of Saturday, 12 January, for regional meetings and possible interregional discussions to prepare for the continuation of negotiations on Sunday, 13 January.

### Progress made at the fourth session

6. At our fourth session, held in Punta del Este, Uruguay, from 27 June to 2 July 2012, we carried out extensive negotiations on the draft text, and significant progress was made. I am pleased that the discussions continued both in plenary and in contact groups with the same cooperative spirit and

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\* UNEP(DTIE)/Hg/INC.5/1.

approach which have been a feature of the negotiations to date and instrumental in facilitating the progress made. The fourth session allowed in-depth discussion on substantive articles that had not previously been addressed thoroughly in the process. I believe that the fourth session provided delegates with the opportunity to present their views on all the draft articles and allowed for the preparation of a draft text that reflects the needs of all Governments involved in the negotiations.

7. I am honoured by the trust that you have placed in me in requesting me to prepare a Chair's text for consideration at the fifth session. I have taken the opportunity to consult with the Bureau and to seek clarification from the co-chairs of the contact groups at the fourth session in preparing a Chair's text that I believe strikes a balance between the various positions espoused by the parties, as captured in the draft text set out in annex I to the report of the committee on the work of its fourth session (UNEP(DTIE)/Hg/INC.4/8). Further to your request, I have also sought to harmonize style and terminology in my text and to achieve editorial consistency in the draft instrument.

8. The Chair's text is presented in annex II to the note by the secretariat entitled "Draft text for a global legally binding instrument on mercury: Chair's draft text" (UNEP(DTIE)/Hg/INC.5/3).

#### **Preparing for the fifth session**

9. As I have done previously, I would like to emphasize the need for delegations to prepare carefully for the fifth session of the committee, which will be the last session of the intergovernmental negotiating process for a legally binding instrument on mercury. According to the mandate as set out in Governing Council decision 25/5, the negotiations are to be concluded before the twenty-seventh session of the Governing Council/Global Ministerial Environment Forum of the United Nations Environment Programme (UNEP), which is scheduled to be held from 18 to 22 February 2013. The committee is therefore expected to finalize the draft text at its fifth session.

10. With a view to concluding the negotiations at the fifth session, I strongly encourage all parties to arrive in Geneva with the necessary mandates and flexibility to enable us to achieve an ambitious text.

11. Preparedness for the session will play a crucial role in ensuring that the negotiations can be concluded successfully in six days. In particular, I would invite you to carefully review in advance of the session all the elements of the Chair's text that I have prepared, which is intended to be the basis for our work at the fifth session. I have prepared a commentary to the Chair's text with the purpose of explaining the changes that I have made to the draft text set out in annex I to the report of the committee on the work of its fourth session (UNEP(DTIE)/Hg/INC.4/8) and the reasons for them and identifying some issues that I believe will need to be further addressed so that the negotiations can be successfully concluded in Geneva. Furthermore, I have included a table in the appendix to the commentary that lists all the articles and annexes included in the Chair's text, together with a brief indication of any changes made.

12. I strongly encourage you to undertake the necessary consultations nationally and regionally and also to take the opportunity over the next few months to consult with other regions and delegations, as you consider appropriate. I wish to highlight the relatively short time available for negotiations at the fifth and final session, which makes it necessary for some issues to be considered and discussed extensively prior to the negotiations so that they can be moved through swiftly, allowing us to spend sufficient time on other key global issues that have been identified as requiring significant discussion at the fifth session, such as the issues of financing and technical assistance and emissions and releases. Accordingly, it is important to make good use of the remaining part of the intersessional period with a view to making progress on certain issues through dialogue in advance of the fifth session.

13. I also wish to draw your attention to the mandated intersessional work on emissions and releases. The co-chairs of the contact group on emissions and releases have been requested to prepare, for consideration by the committee at its fifth session, proposed mercury air emissions thresholds below which the provisions of the mercury instrument might not apply, taking into account the size of emitting installations. Further to the committee's request, the secretariat has also compiled the information provided by Governments on thresholds in use in regulating mercury at the national level and on sources of emissions and releases of mercury to land and water (see UNEP(DTIE)/Hg/INC.5/4). Furthermore, in line with the intersessional mandate, the secretariat has, in cooperation with the World Health Organization, prepared a report setting out the results of its analysis on the extent to which the provisions of the draft text reflect the content of article 20 bis on health aspects (see UNEP(DTIE)/Hg/INC.5/5). Finally, the secretariat prepared draft elements of the final act to be adopted at the anticipated diplomatic conference at which the mercury instrument will be signed (see UNEP(DTIE)/Hg/INC.5/6). Pursuant to the committee's request, the elements address, among other things, how to promote and prepare for the early implementation of the mercury

instrument; arrangements for the interim period between the signing of the instrument and its entry into force, including arrangements for financial and technical assistance during that period; and secretariat arrangements. Those documents will be available in advance of the regional consultations.

14. As always, I encourage you to keep in mind the wealth of other information and documentation made available prior to and during the negotiating process. To facilitate an overview of this information, the secretariat will provide, as has been the case for previous sessions, an updated overview of this information and how it relates to the substantive issues and sections of the revised draft text (see UNEP(DTIE)/Hg/INC.5/INF/2).

15. I also encourage you to refer to the report of the intergovernmental negotiating committee to prepare a global legally binding instrument on mercury on the work of its fourth session (UNEP(DTIE)/Hg/INC.4/8).

16. I invite all Governments to make good use of the opportunity for preparatory discussions in the regional consultations to be held from October to December 2012, as well as in the regional group meetings that will precede our fifth session, to be held on Saturday, 12 January 2013. I also underline and reiterate the importance of bilateral and interregional consultations in advance of the fifth session. Such consultations should be aimed at both enhancing understanding between regions on the various negotiation challenges and at resolving differences between delegations on certain aspects of my text. I welcome the secretariat's efforts in organizing such meetings, as they have played an important role in the negotiations to date. I have been encouraged by the cooperative and facilitative approach that we have taken in our discussions to date. It is essential that this spirit and approach be maintained and further strengthened and that at the fifth session we reach agreement on a text that is ambitious, robust and satisfactory to all parties involved in order to ensure that the convention can be opened for signature in Japan in the second half of 2013.

#### **Objective of the fifth session**

17. The objective of the fifth session is to conclude negotiations and produce a complete text for the mercury convention, thus fulfilling the mandate set out in Governing Council decision 25/5. It would also be desirable to prepare for the diplomatic conference for the signing of the convention, scheduled to be held in Japan in October 2013.

#### **Organizing our work at the fifth session**

18. Turning to the substance of our work, I would like to thank you for the detailed discussions at the fourth session, which resolved some areas of difference on the draft text and helped us to arrive at suitable language to capture common views. With regard to other areas of the draft text, the discussions allowed all of the relevant views to be put forward through both plenary and contact groups, ensuring consideration of the full range of views.

19. In line with my mandate, and as endorsed by the Bureau, I have taken the opportunity to present in my text language that seeks to capture the views expressed in the discussions, and to present a way forward that I believe allows the needs of all countries to be met. I note that the texts produced by some contact groups were a compilation of a range of views. I have therefore taken the opportunity to consolidate them so as to present a limited number of clear options for consideration at the fifth session.

20. During the fifth session, we will have very limited time for negotiations, as we have only six days for our discussions. While this technically gives us 36 hours in plenary, I note that a certain amount of time is taken up in organizational and administrative matters. We will therefore need to be very efficient in terms of our discussions so as to ensure the best utilization of scarce time. I therefore encourage delegates to approach the negotiations with a flexible attitude and, while seeking to ensure that their policy positions have been captured, to focus on policy matters rather than on wording subtleties. I also hope that my text will be considered to be a suitable approach and that its endorsement will serve as the basis for our negotiations.

21. With a view to saving time in our plenary discussions, the segments of the agenda dealing with the opening ceremony, the organization of work and general statements will need to be severely curtailed. I would therefore invite remarks to be delivered, to the extent possible, on a regional basis rather than by individual Governments and other participants. Opening remarks should be limited to issues directly contributing to progress in and the finalization of the negotiations and should not be of a general nature. Again in the interests of time, I would like to encourage the submission to the secretariat of national statements as well as statements by other participants for uploading on the intranet. This approach will enable us to turn speedily to the substance of our work.

22. There are some sections of my text where options are presented. In order to move the negotiations forward, we need to avoid repeating the same ideas and views and to work swiftly to finalize a single, agreed approach. I encourage all delegates to use the time remaining before the fifth session to carefully consider the options that their Governments could accept and to seize all opportunities to discuss outstanding issues with representatives who have different views in order to identify areas of convergence and possible ways forward. I do not encourage the submission of new approaches unless they have been extensively discussed in a number of different regions or are being considered by a range of delegations that have expressed interest in the issues as solutions to advancing the negotiations. New approaches, as such, may divert our discussions.

23. I recognize that I have presented new text on certain issues. Given the limitations on our time, however, I would encourage all delegates to ensure they are very familiar with the text prior to the fifth session, as time will not allow for a reading of the entire text in plenary. The final plan for the organization and flow of the session, which will be proposed for the committee's endorsement, will be decided by the Bureau at its last meeting prior to the session on the basis of input from regional and other consultations. At the time of the drafting of the present note, however, the Bureau and I envisage that the following sections of the draft text will require significant time for negotiations: supply and trade; products and processes; emissions and releases; financial resources and technical and implementation assistance; and compliance. Furthermore, I would urge that sufficient time be provided for the consideration of the remaining articles or paragraphs of the final clauses not yet referred to the Legal Group.

24. In addition, sufficient time will be set aside to discuss the preamble, article 1, on the objective, article 1 bis, on the relationship with other international agreements, and article 2, on the definitions, which were postponed for consideration at the fifth session.

#### **Using smaller groups to allow for more detailed discussions and ensure progress**

25. I recognize that, as has been the practice to date, there will be a need to refer outstanding issues to smaller groups for more detailed consideration. At our final session, in contrast to previous sessions, we may need to make more use of drafting groups, in which a small number of Government delegates will focus their attention on ensuring that policy choices made in larger groups are accurately captured in the draft text. Broader issues may still be discussed in larger groups or contact groups, where, I hope, further agreement on the most suitable approaches will be reached. The results of the small groups' deliberations will of course be presented for consideration by the committee in plenary. I will give the chair or co-chairs of any such groups a clear mandate to approach their tasks in the most efficient and effective manner, including by encouraging them to establish small drafting groups, as required, to handle areas with regard to which policy issues are clear. I also intend to make use of the "friends of the Chair" approach to assist me further in dealing with outstanding issues.

26. The Bureau and I continue to be conscious of the challenges faced by many delegations in covering a broad set of simultaneous discussions, but our time is short. I believe, however, that we may benefit on this occasion from the location of the meeting, and I would encourage delegates to draw on the resources available at the permanent missions located in Geneva. As far as possible, I will try to limit the number of small groups that meet simultaneously, but I encourage all delegations to explore options for prioritizing issues and covering the various discussions with like-minded Governments, as this would greatly facilitate negotiations.

27. Decisions concerning what groups will be needed and when they will meet will be based on a plan developed by the Bureau, but ultimately such determinations will be made on a running basis during the fifth session. The Bureau will discuss the matter at its last meeting before the fifth session.

28. As I did during the fourth session, I will also encourage the chairs and co-chairs of the various groups to meet regularly, as this will assist in further promoting coherence in terms of the negotiations and the draft text under development. I will also expect delegates to ensure that they remain informed on the issues discussed and the progress made in the various groups.

29. At our second session, we established a legal group to assist the committee, as reflected in paragraph 251 of the report of the committee on the work of that session (UNEP(DTIE)/Hg/INC.2/20). The Legal Group worked extensively during the fourth session, was able to consider all material submitted to it and produced a revised draft text that was presented to the committee in plenary in conference room papers. It is essential that all negotiated draft text is presented as soon as possible to the Legal Group for its consideration during the fifth session, as it needs to be finalized prior to the closure of the meeting. The only amendments made to the text between the closure of the fifth session and the diplomatic conference will be minor formatting and consistency changes, which, by common practice, are entrusted to the secretariat.

30. The Bureau and I have been working intersessionally in preparation for the fifth session, including through conference calls and meetings, and this close coordination will continue before and at the fifth session. We are well aware that the present scenario note calls for all of us to step up the pace, and our final session will definitely be work-intensive. Given the possible larger number of groups and longer duration of the session, we plan to structure the work to allow for some breathing space and the possibility of informal consultations and discussions.

**Desired outcomes of the fifth session**

31. The desired outcome of the fifth session is a complete mercury convention that can be signed at the diplomatic conference in Japan. Furthermore, it would be desirable to make significant progress in developing and reviewing the necessary documentation at the session, including draft resolutions, for adoption at the preparatory meeting and at the diplomatic conference.

32. The Bureau and I are confident that we will meet the goal we set ourselves of completing the negotiations prior to the twenty-seventh session of the UNEP Governing Council by concluding them within the period assigned for the fifth session. If we tackle the task with flexibility, a cooperative spirit and hard work, that is an achievable goal.

33. In conclusion, I urge all delegates to prepare themselves to conclude our work in such a spirit.

34. I very much look forward to celebrating the successful conclusion of the negotiations on a legally binding instrument on mercury with all of you in January 2013.

Fernando Lugris, Chair

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