COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 29.1.2008
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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty concerning the common position of the Council on the adoption of a Regulation of the European Parliament and of the Council on the banning of exports and the safe storage of metallic mercury

1 BACKGROUND

Date of transmission of the proposal to the EP and the Council (document COM(2006)636 final – 2006/0206COD):	26 October 2006
Date of the opinion of the European Economic and Social Committee:	25 April 2007
Date of the opinion of the European Parliament, first reading:	20 June 2007
Date of adoption of the common position (by unanimity):	20 December 2007

2 OBJECTIVE OF THE COMMISSION PROPOSAL

The aim of the proposal is to implement actions 5 (phase out of mercury exports) and 9 (storage of surplus mercury from the chlor-alkali industry) of the Mercury Strategy, COM (2005)20 of 28 January 2005. It is one part of a broader package of legislative and non-legislative actions under the Strategy.

The Commission Proposal contains two specific measures relating to mercury:

- banning of exports of metallic mercury and

- introducing a storage obligation for metallic mercury from three industrial sources (chlor-alkali industry, non-ferrous metal production, natural gas cleaning), covering the options of temporary storage as well as of final disposal.

An information exchange mechanism and reporting obligations complement these provisions. The information exchange shall ensure that potential emerging needs for further legislative steps can be identified in due time.

3 COMMENTS ON THE COMMON POSITION

3.1 General comments

The Commission accepted in full, in part or in principle 8 of the 40 amendments adopted by the European Parliament in its first reading. 2 amendments have now been incorporated, either verbatim or in spirit, in the common position.

The Commission accepted the amendments introducing a provision on penalties, amendments relating to an expansion of the information exchange and amendments bringing minor changes in wording to the recitals. The Commission did not accept the amendments which changed the legal base of the Proposal, expanded its scope, changed the date for entry into effect of the export ban, limited the storage of metallic mercury to temporary storage only, sought granting preferential treatment for the Almadén site and introduced support measures for developing countries and NGOs.

The Council has agreed to incorporate, with a slightly different wording, the Parliamentary amendments introducing a provision on penalties.

The Commission considers that the common position does not alter the approach or aims of the Proposal and can thus support it as it stands.

3.2 Detailed comments

3.2.1 Parliamentary amendments accepted by the Commission and incorporated in full, in part or in principle in the common position

Amendments 17 and 34 have been incorporated, with slightly different wording. They add an Article on penalties and a corresponding recital to the original Proposal.

3.2.2 Parliamentary amendments rejected by the Commission but incorporated in full, in part or in principle in the common position

No amendment rejected by the Commission has been incorporated in the common position.

3.2.3 Parliamentary amendments rejected by the Commission and the Council and not incorporated in the common position

The majority of the parliamentary amendments were rejected by both institutions and not incorporated.

Amendments **1, 7, 8, 9, 10, 16, 20, 22, 33 and 50** were rejected since they imply a considerable extension of the scope of the Regulation (export ban for mercury compounds and mercury containing products, import ban). The Commission's impact assessment on the initial proposal did not allow to justify the need or opportunity of such an extension.

Amendments **2 and 19** were rejected as they change the legal base of the Proposal.

Amendments **6, 24 and 36** were rejected as they imply a preferential treatment for a single storage site (Almadén) and compensation measures for former mines. The choice of individual storage sites should be left to the economic operators. The Regulation is not a financial instrument and support measures, if and where needed, should be dealt with in a different context.

Amendment **11** was rejected as a reference to a PARCOM Decision on the phase out of mercury cell technology in the chlor-alkali industry is irrelevant for the content of the Regulation.

Amendments **12, 15, 25, 26, 28 and 47** were rejected as they imply a restriction to temporary storage alone, excluding the possibility of final disposal. The Commission sees final disposal of metallic mercury as perfectly feasible, under the condition of strict safety rules.

Amendments **16 and 35** were rejected as there is no need for specific provisions on public information and awareness raising. The risk associated with mercury are widely publicised and all relevant information on Community actions is easily available on the internet.

Amendments **18, 38 and 39** were rejected as technical and financial assistance to developing countries and/or to NGOs active in the field of mercury go far beyond the scope of the Regulation. The Regulation is not a financial instrument.

Amendments **13, 30 and 32** were rejected as they introduce very complex and burdensome reporting requirements that are disproportional to the real information needs.

Amendment **37** was rejected as the proposed date is too early.

Amendment **41** was rejected as it is unnecessary, as IPPC permitting covers the issue already.

3.2.4 Parliamentary amendments accepted in full, in part or in principle by the Commission but not incorporated in the common position

Amendments **3, 4, 5, 14, 23 and 31** were accepted in part or in principle by the Commission but not incorporated. They predominantly concern minor changes in the recitals.

3.2.5 Additional changes made by the Council to the Proposal

In Article 3, a new option for the temporary or permanent storage of metallic mercury in deep underground hard rock formations has been introduced.

In Article 4, a new paragraph 3 has been introduced, stipulating the development of technical criteria for the storage of metallic mercury under comitology before the entry into force of the export ban.

In Article 5, specific reporting requirements for importers, exporters and storage operators have been introduced.

Article 7 has been re-written and now contains both the information exchange, revised and extended reporting obligations for the Commission and a revision clause.

In Article 8, a specific reference to export restrictions at Member State level has been added.

4- CONCLUSION

The changes introduced by the Council are acceptable to the Commission as they are limited to tightening the safety conditions for the storage of mercury and to an increase in reporting requirements. They do not extend the scope of the Proposal. Therefore the Commission can accept the Common Position.