

EN

EN

EN



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 12.2.2008
COM(2008) 70 final

RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL

on the participation of the European Community in negotiations towards a legally binding instrument on mercury further to Decision 24/3 of the Governing Council of the United Nations Environment Programme (UNEP)

A. EXPLANATORY MEMORANDUM

1. OBJECTIVES

The objective of the Recommendation is to ensure a reliable, consistent and efficient negotiation position of the Community in the upcoming process launched by the Governing Council of United Nations Environment Programme (UNEP) at its 24th session (Decision 24/3 on chemicals management), with a view to adopt an international legally binding instrument on mercury.

2. GENERAL CONTEXT

UNEP recognised already in 2003 that there was sufficient evidence of significant global adverse impacts from mercury and its compounds to warrant further international action to reduce the risk to human health and the environment from the release of mercury and its compounds to the environment. The Decision, establishing a "Programme for international action on mercury", did however not call for any legally binding action on mercury at the global level.

The 23rd Governing Council (GC) Session adopted Decision 23/9 which left it to the next Session to assess "the need for further action on mercury, considering a full range of options, including the possibility of a legally binding instrument, partnerships and other actions".

The 24th Session of the UNEP GC re-launched the debate on the need for a legally binding instrument at the international level. No agreement could be found yet. The GC decided however on a list of priority issues, including the reduction of global mercury demand and supply, and put in place an ad hoc open-ended working group (AHOEWG) mandated to examine, for each of the priorities, the range of available response measures and strategies, the feasibility and effectiveness of voluntary and legally binding approaches, implementation options and cost and benefits of response measures and strategies¹.

The ad-hoc open ended working group is scheduled to meet twice, once before the 10th Special Session of the UNEP GC, in the week of 12 November 2007, and a second time between that Special Session and the 25th regular UNEP GC scheduled for February 2009. The group is mandated to provide a progress report to the Special Session and a final report presenting options and consensus recommendations to GC 25.

On EU level, the Commission adopted its Community Strategy Concerning Mercury² in 2005. Action 5 of the Strategy reads: "*As a pro-active contribution to a proposed globally organised effort to phase out primary production of mercury and to stop surpluses re-entering the market, ... the Commission intends ... to phase out the export of mercury from the Community by 2011*". Action 20 stipulates that "*to reduce mercury supply internationally, the Community should advocate a global phase-out of primary production and encourage other countries to stop surpluses re-entering the market*". In reaction to the Strategy, the Council, in its Resolution of 16 June 2005 underlined the importance of this action, but also stated that it "*will not be*

¹ UNEP GC Decision 24/3 of 9 February 2007

² COM(2005)20 final, 28.1.2005

sufficient to protect human health and the environment from the negative effects of the mercury released into the environment" and that therefore "an international commitment is needed in addition, with a view to agreeing on a legally binding instrument".

This continued to be the EU position during the 24th Session of the UNEP Governing Council (5-9 February 2007). There was some support for legally binding regulation on mercury at the global level from African and South American countries, but others like the USA, Canada, China and India refused to commit towards a LBI approach, at least for the time being.

It is therefore evident that the four-step structure now put in place by UNEP, as described above, will be decisive for the commitment of the international Community towards further action by means of a LBI, or by giving preference to other instruments. Even if the group is not formally designed as a negotiation body, it is evident from the last GC meetings that, as a matter of fact, it will work very much like an international negotiation committee in its first phase of work. The Community's ambition to come to a global legally binding instrument on mercury needs therefore to be brought forward and supported in a consistent and convincing way. Enhanced co-operation ensuring a high quality input into the process will be of high importance.

3. EXISTING COMMUNITY PROVISIONS

Mercury is a substance already regulated to a large extent by existing legislation at Community level. The mercury related *acquis* consists of some ten Directives and Decisions limiting the content of mercury in certain products, from cosmetics to batteries, or restricting the marketing and use of mercury containing products. An overview list of mercury related Community legislation is given in chapter 5.3 of the Impact Assessment accompanying the recent proposal of a Regulation on the banning of exports and the safe storage of metallic mercury³. Another important piece of Community legislation still in the legislative process is the Proposal for a Directive relating to restrictions on the marketing of certain measuring devices containing mercury⁴. This Proposal, as well as the Mercury Strategy itself, is complemented by an Impact Assessment.

³ COM(2006)636 final, 26.10.2006

⁴ COM(2006)69 final, 21.2.2006

B. RECOMMENDATION

In the light of the above, the Commission recommends:

- a) that the Council authorizes the Commission to participate, on behalf of the European Community, on matters falling under Community competence, in the negotiations towards a legally binding instrument on mercury further to UNEP GC Decision 24/3, starting with the ad-hoc open ended working group established under this Decision;
- b) that the Council authorizes the Commission to conduct these negotiations on behalf of the European Community, in consultation with the special committee designated by the Council in accordance with the negotiating directives set out in the Annex;
- c) that, when the negotiations deal with matters falling within the shared competence of the Community and of the Member States, the Commission and the Member States should cooperate closely during the negotiation process, with a view to aiming for unity in the international representation of the European Community.

ANNEX

Negotiating Directives

1. In the assessment and negotiation process under the auspices of UNEP the Commission will ensure that the full range of measures and available options for a global risk management of mercury are considered, with a particular attention on primary mercury production, restrictions in the trade of metallic mercury, products containing mercury and the use of mercury in the chlor-alkali industry. The Commission will aim for the early adoption of suitable legally binding measures covering these items and the relevant players on the world market.
2. The Commission shall ensure that the provisions of the future legally binding instrument are consistent with relevant Community legislation, with international commitments and with the objectives of Community policies, in particular of the Community Strategy Concerning Mercury.
3. The Commission shall ensure that the draft legally binding instrument on mercury contains appropriate provisions enabling the Community to become a Contracting Party thereto.
4. The Commission shall report to the Council on the outcome of the negotiations and, where appropriate, on any problem that may arise during the negotiation.