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INFORMATION NOTE

from: General Secretariat
to: Delegations

Subject : Proposal for a Regulation of the European Parliament and of the Council on the banning of exports and safe storage of metallic mercury
- Political agreement

Delegations will find attached in Annex I to this note a revised text of the above-mentioned proposal, reflecting the political agreement reached by the Council (Environment) on 28 June 2007.

Annex II contains a draft statement to be included in the minutes of the Council.

Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND THE COUNCIL
on the banning of exports and the disposal of metallic mercury *

Article 1

The export of metallic mercury (Hg, CAS RN 7439-97-6) from the Community shall be prohibited from 1 July 2011.

Article 2

From the date set out in Article 1, metallic mercury that is no longer used in the chlor-alkali industry, metallic mercury gained from the cleaning of natural gas and metallic mercury from non-ferrous mining and smelting operations shall be considered as waste and be disposed of according to the provisions of Directive 2006/12/EC in a way that is safe for human health and the environment.

* Visa of the preamble: "Having regard to the Treaty establishing the European Community, and in particular Article 175(1) thereof and Article 133 thereof in relation to Article 1 of this Regulation".

Article 3

1. By derogation to point (a) of Article 5(3) of Directive 1999/31/EC, metallic mercury that is considered as waste may, in appropriate containment, be
 - (a) temporarily stored for more than one year or permanently stored (disposal operations D 15 or D 12 respectively, as defined in Annex II A of Directive 2006/12/EC) in salt mines adapted for the disposal of metallic mercury, or in deep, underground, hard rock formations providing for an equivalent level of safety and confinement as those salt mines, or
 - (b) temporarily stored (disposal operation D 15 as defined in Annex II A of Directive 2006/12/EC) for more than one year in above-ground facilities dedicated to and equipped for the temporary storage of metallic mercury, whereas the criteria set out in section 2.4 of the Annex to Decision 2003/33/EC shall not apply.

The other provisions of Directive 1999/31/EC and Decision 2003/33/EC shall apply to paragraphs (a) and (b).

2. Directive 96/82/EC on the Control of major accident hazards involving dangerous substances (SEVESO II) shall apply to storages referred to Article 3(1)(b).

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* New recital: "This Regulation should be without prejudice to Regulation (EC) No 1013/2006 of the European Parliament and of the Council on shipments of waste. Nevertheless, in order to allow appropriate disposal of metallic mercury in the Community, the competent authorities of destination and dispatch are encouraged to avoid raising objections to shipments of metallic mercury that is considered as waste based on Article 11(1)(a) of Regulation (EC) No 1013/2006. It is noted that, according to Article 11(3) of Regulation (EC) No 1013/2006, in the case of hazardous waste produced in a Member State of dispatch in such a small quantity overall per year that the provision of new specialised disposal installations within that Member State would be uneconomic, Article 11(1)(a) does not apply."

Article 4

1. The safety assessment to be carried out in accordance with Decision 2003/33/EC for the disposal of metallic mercury according to Article 3 shall cover in particular the additional risks arising from the nature and long-term behaviour of the metallic mercury and its containment.
2. The permit referred to in Articles 8 and 9 of Directive 1999/31/EC for facilities according to Article 3(a) and (b) shall include requirements for regular visual inspections of the containers and the installation of appropriate vapour detection equipment to detect any leak.
3. The requirements for facilities listed in Article 3(a) and (b) as well as acceptance criteria for the metallic mercury amending Annexes I, II and III of Directive 1999/31/EC on the landfill of waste shall be adopted according to the procedure referred to in Article 16 of this Directive. The Commission shall make an appropriate proposal as soon as possible, and at the latest 18 months before the date set out in Article 1. *

Any final disposal activities (D12 as defined in Annex II A of Directive 2006/12/EC) concerning metallic mercury shall only be permitted after the date at which the amendment of Annexes I, II and III of Directive 1999/31/EC on the landfill of waste has been adopted.

* Amendment to recital 7: "The storage conditions in a salt mine or in deep underground, hard rock formations, adapted for the disposal of metallic mercury, should notably meet the principles of protection of mercury against groundwater, prevention of vapour emissions of mercury, impermeability to gas and liquids of the surrounding and - in case of permanent storage - of firmly encapsulating the wastes at the end of the deformation process. Those criteria should be introduced in the annexes of Directive 1999/31/EC".
New recital 7a: " The above-ground storage conditions should notably meet the principles of reversibility of storage, protection of mercury against meteoric water, impermeability towards soils and prevention of vapour emissions of mercury. Those criteria should be introduced in the annexes of Directive 1999/31/EC when they are amended for the purpose of Article 4(3)".

Article 5

1. Member States shall submit to the Commission a copy of any permit issued for a facility designated to temporarily or permanently store (disposal operations D 12 or D 15 respectively, as defined in Annex II A of Directive 2006/12/EC) metallic mercury.
2. Member States shall at the latest 1 year after the date set out in Article 1, inform the Commission on the application and market effects of this Regulation in their respective territory. Member States shall, upon request from the Commission, submit that information earlier than the date set out above.
3. By the same date, importers, exporters and operators of activities referred to in Article 2, as appropriate, shall send to the Commission and to the competent authorities the following data:
 - (a) volumes, prices, originating country and destination country as well as the intended use of metallic mercury entering the Community;
 - (b) volumes, originating country and destination country of metallic mercury considered as waste that is traded cross-border within the Community.

Article 6

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission one year after entry into force of this Regulation at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 7

1. The Commission shall organise an exchange of information between Member States and the industries concerned. That exchange of information shall in particular examine the potential need for extending the export ban to mercury compounds and products containing mercury, for an import ban of metallic mercury, mercury compounds and products containing mercury, for extending the storage obligation to metallic mercury from other sources and for time limits concerning temporary storage of metallic mercury.
 - 1a. The Commission shall keep under review ongoing research activities on safe disposal options, including solidification of metallic mercury. The Commission will submit a report at the latest 1 year before the date set out in Article 1. On the basis of this report, the Commission will, if appropriate, present a proposal for a revision of this Regulation as soon as possible and not later than the date referred to in paragraph 3.
2. The Commission shall assess the application and market effects of this Regulation in the Community, taking into account the information referred to in paragraph 1, 1a and Article 5.
3. The Commission shall submit a report, if appropriate accompanied by a proposal for a revision of this Regulation, to the European Parliament and the Council at the latest 2 years after the date set out in Article 1 which shall reflect and evaluate the outcome of the information exchange mentioned in paragraph 1 and of the assessment mentioned in paragraph 2.
4. At least one year before the date set out in Article 1, the Commission shall report to the European Parliament and the Council on progress in multilateral activities and negotiations on mercury, assessing in particular the consistency of the timing and scope of the measures specified in this Regulation with international developments.

Article 8

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

National measures restricting the export of metallic mercury which were adopted in line with Community legislation before the adoption of this Regulation may be maintained until 1 July 2011.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

**STATEMENT BY SWEDEN, BELGIUM, DENMARK, GREECE, ITALY AND
PORTUGAL**

Banning on exports and the safe storage of mercury

"Sweden, Belgium, Denmark, Greece, Italy and Portugal maintain concern regarding the uncertainties with permanent storage of metallic, i.e. liquid, mercury.

However, with the objective of an early agreement with the European Parliament, we have accepted the compromise in Council.

We will engage actively in the coming process to further develop the regulation and reach an agreement on an effective export ban and safe storage of mercury waste."
