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2016/0008 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be adopted, on behalf of the European Union, at the Seventh Session of the Intergovernmental Negotiating Committee on mercury and at the first meeting of the Conference of the Parties of the Minamata Convention on Mercury with regard to the provisional and subsequent final adoption of guidance referred to in its Article 8, paragraphs 8 and 9.

Explanatory Memorandum

1. CONTEXT OF THE PROPOSAL

The European Union (EU) and 26 Member States have signed the Minamata Convention on Mercury (hereinafter referred to as "the Convention")¹ which was negotiated under the auspices of the United Nations Environment Programme (UNEP) and adopted in October 2013 at a Conference of the Plenipotentiaries in Kumamoto, Japan².

The Convention is the main international legal framework aimed at protecting human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds (hereinafter referred to as "mercury emissions") to air, water and land. It addresses the whole life-cycle of mercury from primary mercury mining to mercury waste disposal.

Article 8 of the Convention requires Parties to control and, where feasible, reduce mercury emissions to air originating from point sources falling within the source categories listed in its Annex D. In accordance with Article 8, paragraph 2, letter (b), of the Convention, a Party may choose to regulate only part of the sources covered within a source category, provided that the sources covered account at least for 75 per cent of the emissions from the source category concerned.

In line with Article 8, paragraph 4, of the Convention, Parties shall require all "new sources"³ to make use of the best available techniques (BAT) and of the best environmental practices (BEP). For "existing sources", Parties shall control atmospheric mercury emissions through one or more of the measures listed in Article 8, paragraph 5, of the Convention, which include the use of BAT and BEP, the establishment of a quantified goal or the setting-up of emission limit values (ELVs). Parties are also required, by virtue of Article 8, paragraph 7, of the Convention, to establish and maintain an inventory of mercury emissions to air from the sources regulated under Article 8.

To assist Parties to fulfil these obligations, Article 8, paragraphs 8 and 9, of the Convention provides that guidance shall be adopted by the Conference of the Parties to the Convention (CoP) on BAT and BEP, on support for Parties in implementing the measures set out in Article 8, paragraph 5 (in particular in establishing quantified goals and ELVs), on the criteria that Parties may implement under Article 8, paragraph 2, letter (b) and on the methodology for preparing an emission inventory.

Article 8, paragraph 10 (2nd sentence), of the Convention specifies that Parties shall take this guidance into account when implementing Article 8.

Within this framework, the Conference of Plenipotentiaries on the Convention set up and mandated a group of technical experts, as a subsidiary body reporting to the Intergovernmental Negotiating Committee, to develop the guidance documents called for in the above-mentioned Article 8, paragraphs 8 and 9. The objectives set by the Conference are to enable the CoP to decide on such issues at its first meeting and to promote expeditious international action to protect human health and the environment from anthropogenic mercury

¹ Certified copy of the Minamata Convention on Mercury, available at: <https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf>

² The European Union and twenty-one Member States signed the Minamata Convention on 10 October 2013, Croatia, Cyprus, Latvia and Poland on 24 September 2014 and Malta on 8 October 2014. While Estonia and Portugal did not sign the Convention, they have expressed their commitment to ratify it.

³ A "new source" means a source the construction or substantial modification of which is commenced at least one year after the date of entry into force of the Convention for the Party concerned.

emissions pending the entry into force of the Convention.⁴ In effect, the four guidance documents have been finalised by this expert group, published by the UNEP Secretariat on [XX/XX/XXXX]⁵ and shall accordingly be submitted for provisional adoption at the Seventh session of the Intergovernmental Negotiating Committee (INC.7) to take place on 10-15 March 2016 in Jordan, bearing in mind that they are not expected to be modified in substance between this provisional adoption and their formal and final adoption by the Conference of the Parties to the Convention (CoP).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

The group of technical experts met four times between February 2014 and September 2015. Following a public consultation by UNEP on the draft guidance documents that took place in summer 2015, the group finalised the draft documents shortly after its fourth meeting held on 10-15 September 2015 in Stockholm.

While the EU is working towards the transposition into Union law and the ratification of the Convention, the obligations resulting from the above-mentioned Article 8, paragraphs 4, 5 and 7, as complemented by the Article 8 guidance, are already established in several EU instruments. In particular, Directive 2010/75/EU on Industrial Emissions (IED)⁶ requires operators of installations covered by Article 8 of the Convention to take appropriate measures to prevent pollution caused for instance by mercury emissions, and, for that purpose, to make use of BAT. Regarding the obligation to set up and maintain a mercury emission inventory and the relevant methodology explained in the proposed guidance, Regulation (EC) No 166/2006 on a European Pollutant Release and Transfer Register (E-PRTR)⁷ establishes such an inventory.

Therefore, the provisional adoption of the guidance documents, followed by formal adoption by the CoP, would not cause any additional environmental or socio-economic impacts in the EU. It would however encourage third countries to reduce emissions of mercury to air that cause transboundary pollution in the EU and contribute to contaminating the global food chain.

3. LEGAL ELEMENTS OF THE PROPOSAL

Considering that EU legislation is in line with the four proposed guidance documents, the position to be taken by the EU at INC.7 should be to support them so as to ensure that they are provisionally adopted, with a view to promoting their implementation as soon as possible and to enabling their formal and final adoption by the CoP at its first meeting.

4. BUDGETARY IMPLICATION

The proposed decision does not have budgetary implications for the Union.

⁴ UNEP(DTIE)/Hg/CONF/4, Resolution 1, paragraph 10

⁵ The text of the four guidance, as finalised by the group of technical experts mandated by the Conference of Plenipotentiaries and published by the UNEP Secretariat on [XX/XX/XXXX] are available at [...].

⁶ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on Industrial Emissions, OJ L 334, 17.12.2010, p. 17.

⁷ Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC, OJ L 33, 4.2.2006, p. 1.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

- (1) The Union is a signatory to the Minamata Convention on Mercury⁸ (hereinafter referred to as "the Convention").
- (2) Article 8, paragraph 4, of the Convention requires Parties to ensure that new point sources falling within the source categories listed in Annex D make use of best available techniques and best environmental practices to control and, where feasible, reduce emissions of mercury and mercury compounds to the atmosphere.
- (3) Article 8, paragraph 5, of the Convention provides that Parties shall control and, where feasible, reduce air emissions of mercury and mercury compounds from the existing point sources falling within the source categories listed in Annex D by implementing one or more of the following measures: the use of best available techniques and best environmental practices and/or the establishment of quantified goals and/or emission limit values and/or a multi-pollutant control strategy and/or alternative measures.
- (4) Article 8, paragraph 7, of the Convention calls for Parties to establish and maintain an inventory of emissions of mercury and mercury compound to the atmosphere.
- (5) Article 8, paragraph 8, of the Convention stipulates that the Conference of the Parties to the Convention, at its first meeting, shall adopt guidance on best available techniques and best environmental practices, taking into account any difference between new and existing sources and the need to minimize cross-media effects, as well as guidance aimed at supporting parties to implement their obligations under Article 8, paragraph 5, in particular in determining goals and setting emission limit values.
- (6) Article 8, paragraph 9, of the Convention foresees the adoption by the Conference of the Parties to the Convention, as soon as practicable, of guidance on criteria that

⁸ Certified copy of the Minamata Convention on Mercury available at: <https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf>

Parties may develop pursuant to Article 8, paragraph 2, letter (b), when choosing to apply control measures on emissions of mercury and mercury compounds to air only to the point sources falling within a given source category listed in Annex D, provided that at least 75 per cent of the emissions of the concerned source category are covered, and of guidance on the methodology to be used for preparing inventory of air emissions of mercury and mercury compounds.

- (7) Article 8, paragraph 10, second sentence, of the Convention specifies that Parties shall take the guidance into account in implementing the relevant provisions of Article 8. Such guidance will therefore have legal effects.
- (8) The text of the proposed four guidance documents was developed by the group of technical experts established and mandated by the Conference of Plenipotentiaries on the Convention in accordance with the Final Act of this Conference and formally published by the United Nations Environment Programme Secretariat on [XX/XX/XXXX].
- (9) The Intergovernmental Negotiating Committee of the Convention should provisionally adopt the proposed four guidance documents at its seventh session to be held on 10-15 March 2016 in Jordan so as to promote their implementation as soon as possible and to enable the Conference of the Parties of the Convention to formally adopt them at its first meeting.
- (10) Union legislation, including Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on Industrial Emissions⁹ and Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC¹⁰ complies with the provisions of Article 8 of the Convention, as complemented by the proposed guidance.
- (11) The proposed guidance should therefore be supported.

HAS ADOPTED THIS DECISION:

Article 1

The European Union shall support at the seventh session of the Intergovernmental Negotiating Committee on mercury the provisional adoption of the guidance referred to in Article 8, paragraphs 8 and 9, of the Minamata Convention on Mercury, as finalised by the group of technical experts mandated for that purpose by the Conference of Plenipotentiaries on the Convention and as published by the UNEP Secretariat on XX/XX/XXXX] so as to promote their implementation as soon as possible and to enable the Conference of the Parties of the Convention to finally adopt them at its first meeting. The European Union shall also support such subsequent final adoption.

Minor changes consistent with the Union *acquis* to the guidance may be agreed to by the representatives of the Union without further decision of the Council.

Article 2

The Decision(s) of the Conference of the Parties of the Minamata Convention on Mercury adopting the guidance shall be published in the *Official Journal of the European Union*.

Article 3

⁹ OJ L 334, 17.12.2010, p. 17.

¹⁰ Regulation (EC) No 166/2006 European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC, OJ L 33, 4.2.2006, p. 1.

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

*For the Council
The President*