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EUROPEAN COMMISSION

Brussels, 11.3.2011  
SEC(2011) 304 final

**RECOMMENDATION FROM THE COMMISSION TO THE COUNCIL**

**to amend Council Decision of 26 July 2010 on the participation of the European Union  
in negotiations of amendments to the 1998 Protocol on Heavy Metals to the 1979  
Convention on Long-range Transboundary Air Pollution**

## **A. EXPLANATORY MEMORANDUM**

### **1. OBJECTIVES**

The objective of this Recommendation is to amend the Council Decision of 26 July 2010 on the participation of the European Union in negotiations of amendments to the 1998 Protocol on Heavy Metals to the 1979 Convention on Long-Range Transboundary Air Pollution (hereafter: the Council Decision) in view of the decision of the Convention's Executive Body in December 2010 to broaden the scope of the negotiations to include mercury containing products and adjust the timing for the finalisation of the negotiations.

### **2. GENERAL CONTEXT**

The European Union is a Party to the UN-ECE Convention on Long-Range Transboundary Air Pollution (hereinafter: the Convention) since 15 July 1982 and to the Protocol on Heavy Metals (hereinafter: the Protocol) since 3 May 2001. The Protocol sets obligations for the Parties that aim at reducing air emissions of heavy metals, in particular for cadmium, lead and mercury.

The Executive Body of the Convention in December 2009 decided to revise the Protocol with the aim of facilitating for non-parties to accede to an amended Protocol and mandated the Working Group on Strategies and Review (hereinafter: WGSR) to start negotiations. At that time negotiations on mercury containing products (Annex VI and VII) were excluded from the mandate awaiting further information on progress in the recently opened negotiations under UNEP on a global legally binding instrument for mercury. The WGSR was mandated to aim at concluding negotiations by the end of 2011.

On 26 July 2010, the Council authorised the Commission to participate on behalf of the EU in the negotiations of the revision of the Protocol. The Council Decision was adopted in view of the mandate given to the WGSR in December 2009 and therefore does not include an authorisation to negotiate obligations on mercury containing products (described in Annex VI and VII). In this respect, the Council Decision in Article 1 Paragraph 4 stipulates that the Council may, in any case, consider reviewing the negotiating directives, should the Executive Body decide to broaden the mandate to amend Annex VI, including consequential changes to other parts of the Protocol and its Annexes.

Furthermore, the Commission was authorised to participate on behalf of the EU in the negotiations until the end of 2011, in accordance with the original plan of the negotiations under the Convention.

### **3. RECENT DEVELOPMENTS**

On 17 December 2010<sup>1</sup> the Executive Body of the Convention decided to broaden the scope of negotiations to include also aspects of mercury containing products (i.e. Annex VI and VII) and consequential changes to the other parts of the Protocol. It further mandated the WGSR to continue negotiations with the view of finalizing the discussions and presenting proposed amendments to the Protocol in 2012 at the

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<sup>1</sup> Report of the twenty-eight session of the Executive Body of the Convention (Section VI B)

latest. The main reason for broadening the scope was the positive signals from some non-Parties, in particular Belorussia and the Russian Federation, that amendments of Annex VI and VII would be important for these countries to accede to an amended Protocol. In the light of Article 1 Paragraph 4 of the Council Decision and in accordance with Article 218 (3) of the Treaty on the Functioning of the European Union, it is necessary for the Commission to make recommendations to the Council which shall authorize the Commission to participate in the negotiations on behalf of the EU also on the above mentioned additional elements. At the same time the Recommendation proposes to adjust the time frame of the authorization in order to enable the Commission to participate in the negotiations until the end of 2012.

#### 4. EXISTING UNION'S PROVISIONS

The subject matter of Annexes VI (product measures) and VII (product management) is covered by EU legislation. This includes Directive 98/70/EC of the European Parliament and of the Council of 13 October 1998 relating to the quality of petrol and diesel fuels<sup>2</sup> and Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators<sup>3</sup> (as amended by Directive 2008/103/EC<sup>4</sup>).

Product management measures now listed in Annex VII are covered *inter alia* by Regulation 1103/2010<sup>5</sup> on the labeling of batteries, Directive 2002/95/EC on restriction of the use of certain hazardous substances in electrical and electronic equipment<sup>6</sup>, Directive 2002/96/EC on waste electrical and electronic equipment (WEEE)<sup>7</sup> and Directive 2007/51/EC relating to restrictions on the marketing of certain measuring devices containing mercury<sup>8</sup>.

#### **B. RECOMMENDATION**

In the light of the above, the Commission recommends amending the Council Decision as follows:

- (a) In Article 1 Paragraph 1, the words '2010 and 2011' are replaced by '2011 and 2012';
- (b) Article 1 Paragraph 4 is replaced by the following:

'4. The Council may review the content of the negotiating directives at any time. The Council may, in particular, consider reviewing them in case of relevant developments during 2011 and 2012. To this effect, the Commission shall report to the Council on the outcome of the negotiations at regular intervals.'
- (c) Point 1 of the Negotiating Directives set out in the Annex to the Council Decision is replaced by the following:

'1. In the negotiation process under the auspices of the UNECE, the Commission shall endeavour to ensure the objectives falling within the scope of the mandate given by the Executive Body of the Convention on Long-Range Transboundary Air

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<sup>2</sup> OJ L 350 , 28.12.1998 p. 58

<sup>3</sup> OJ L 266, 26.9.2006, p. 1

<sup>4</sup> OJ L 327, 5.12.2008, p. 7

<sup>5</sup> OJ L 313 30.11.2010, p 3

<sup>6</sup> OJ L 37, 13.2.2003, p. 19

<sup>7</sup> OJ L 37, 13.2.2003, p. 24

<sup>8</sup> OJ L 257, 3.10.2007, p.13

Pollution to the Working Group on Strategies and Review (WGSR) on 17 December 2010, that is:

"(a) To continue negotiations with the view of finalizing the discussions and presenting proposed amendments to the Protocol on Heavy Metals at the thirtieth session of the Executive Body in 2012 at the latest. It requested the Working Group to consider potential revisions to the Protocol on Heavy Metals that fall within the following scope:

(i) As a first priority for any revision possibilities for increasing ratifications of the Protocol taking into consideration possible options put forward by the Task Force on Heavy Metals;

(ii) Potential revisions to the text of the Protocol and annexes I to VII, taking into consideration possible options put forward by the Task Force on Heavy Metals as well as the relevant adopted amendments to the Protocol on POPs and the proposed amendments to the Gothenburg Protocol, provided that such revisions would not make it more difficult to achieve increased ratifications;

(iii) Possibilities to make the Protocol more adaptable to future developments by producing a guidance document on best available techniques extracted from annex III and updated as appropriate".

(b) To focus the negotiations, as requested in 2011, on those proposed amendments aimed at increasing ratifications and that address issues raised also in the revision of the Gothenburg Protocol.

(c) To be mindful of the work of the Intergovernmental Negotiating Committee, under the auspices of the United Nations Environment Program, when considering proposals for amendments to Annexes VI and VII regarding mercury containing products (based on the proposal by the European Union and the work of the Task Force on Heavy Metals) given that this Intergovernmental Negotiating Committee is working towards a legally-binding global instrument to address mercury including mercury containing products.'