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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 16.7.2008
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Proposal for a

COUNCIL REGULATION

amending Annexes IV and V to Regulation (EC) No 850/2004 of the European Parliament and of the Council as regards the treatment of waste containing persistent organic pollutants in thermal and metallurgical production processes

(presented by the Commission)

EXPLANATORY MEMORANDUM

Article 7(2) of Regulation 2004/850/EC on persistent organic pollutants provides that waste consisting of, containing or contaminated with persistent organic pollutants is treated in accordance with Annex V of this Regulation in such a way that the persistent organic pollutant content is destroyed or irreversibly transformed. Under Articles 7(6) and 14(3) the Commission may adapt Annex IV and V to the scientific and technical progress. According to Articles 14(3), 17(1) and 17(2) the Commission shall be assisted by the Committee established by Art 18 of Directive 75/442/EEC, repealed by Directive 2006/12/EC.

The Commission submitted a draft Regulation amending Annex IV and V for vote in the Committee established under Art 18 of Directive 2006/12/EC on 7 May 2008. There was no qualified majority for the draft Regulation.

Thus according to the procedure set out in Article 5 of Decision 468/1999/EC a proposal for a Council Regulation is submitted to Council. If Council has not acted within three month from the date of referral of the proposal, the proposed measures shall be adopted by the Commission.

Proposal for a

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amending Annexes IV and V to Regulation (EC) No 850/2004 of the European Parliament and of the Council as regards the treatment of waste containing persistent organic pollutants in thermal and metallurgical production processes

(Text with EEA relevance)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC¹, and in particular Article 7(6) and Article 14(3) thereof,

Whereas:

- (1) At the eighth meeting of the Conference of the Parties to the Basel Convention updated general technical guidelines for the environmentally sound management of waste consisting of, containing or contaminated with persistent organic pollutants (Decision VIII/16) were adopted. The subsection on thermal and metallurgical production of metals was added to the section IV.G.2 dealing with the destruction and irreversible transformation.
- (2) The update of the guidelines should be reflected in Regulation (EC) No 850/2004, because they provide a relevant source for scientific and technical progress in the treatment of wastes containing persistent organic pollutants.
- (3) The updated guidelines also define the levels of destruction and irreversible transformation necessary to ensure that the characteristics of persistent organic pollutants are not exhibited. The methods should *inter alia* not exceed the atmospheric emissions value for polychlorinated dibenzo-p-dioxins (PCDDs) and polychlorinated dibenzofurans (PCDFs) of 0.1 ng TEQ/Nm³. This value is identical to the air emission limit value laid down in Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste². Because it is essential to require that the facilities for the treatment of waste containing persistent organic pollutants meet the emission limit values for PCDDs and PCDFs laid down in Directive 2000/76/EC those limit values should be applied whether or not the processes are subject to that Directive.
- (4) The updated general technical guidelines on persistent organic pollutants also recommend in section IV.G.1 to separate the part of waste equipment which contain or is contaminated with persistent organic pollutants. This requirement clarifies the implementation of pre-treatment operations as referred to in Part 1 of Annex V to

¹ OJ L 158, 30.4.2004, p. 7, as corrected by OJ L 229, 29.6.2004, p. 5 and OJ L 204, 4.8.2007, p. 28. Regulation as last amended by Commission Regulation (EC) No 323/2007 (OJ L 85, 27.3.2007, p. 3).

² OJ L 332, 28.12.2000, p. 91.

Regulation (EC) No 850/2004. Therefore Part 1 of Annex V to Regulation (EC) No 850/2004 should be amended accordingly.

- (5) The toxic equivalent factors used in Annexes IV and V to Regulation (EC) No 850/2004 to calculate concentration limits for PCDDs and PCDFs were updated by the World Health Organisation in 2005 on the basis of latest scientific information. This should be reflected in Annexes IV and V to Regulation (EC) No 850/2004.
- (6) The measures provided for in this Regulation are the most appropriate to ensure a high level of protection of human health and environment.
- (7) Regulation (EC) No 850/2004 should therefore be amended accordingly

HAS ADOPTED THIS REGULATION:

Article 1

Annexes IV and V to Regulation (EC) No 850/2004 are amended in accordance with the Annex to this Regulation.

Article 2

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.

Done at Brussels,

For the Council
The President

ANNEX

Annexes IV and V to Regulation (EC) No 850/2004 are amended as follows:

1. Annex IV is amended as follows:

Footnote (**) is replaced by the following:

"The limit is calculated as PCDD and PCDF according to the following toxic equivalency factors (TEFs):

PCDD	TEF
2,3,7,8-TeCDD	1
1,2,3,7,8-PeCDD	1
1,2,3,4,7,8-HxCDD	0.1
1,2,3,6,7,8-HxCDD	0.1
1,2,3,7,8,9-HxCDD	0.1
1,2,3,4,6,7,8-HpCDD	0.01
OCDD	0.0003
PCDF	TEF
2,3,7,8-TeCDF	0.1
1,2,3,7,8-PeCDF	0.03
2,3,4,7,8-PeCDF	0.3
1,2,3,4,7,8-HxCDF	0.1
1,2,3,6,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDF	0.1
2,3,4,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDF	0.01
1,2,3,4,7,8,9-HpCDF	0.01
OCDF	0.0003

".

2. Annex V is amended as follows:

(a) Part 1 is amended as follows:

(a) the following is added after "R1 Use principally as a fuel or other means to generate energy, excluding waste containing PCBs":

"R4 Recycling/reclamation of metals and metal compounds, under the following conditions: The operations are restricted to residues from iron- and steel-making processes such as dusts or sludges from gas treatment or mill scale or zinc-containing filter dusts from steelworks, dusts from gas cleaning systems of copper smelters and similar wastes and lead-containing leaching residues of the non-ferrous metal production. Waste containing PCBs is excluded. The operations are restricted to processes for the recovery of iron and iron alloys (blast furnace, shaft furnace and hearth furnace) and non-ferrous metals (Waelz rotary kiln process, bath melting processes using vertical or horizontal furnaces), provided the facilities meet as minimum requirements the emission limit values for PCDDs and PCDFs laid down in Directive 2000/76/EC, whether or not the processes are subject to that Directive, and without prejudice to the other provisions of Directive 2000/76/EC * where it applies and to the provisions of Directive 96/61/EC.

(*) Directive 2000/76/EC of the European Parliament and of the Council of 4 December 2000 on the incineration of waste (OJ L 332, 28.12.2000, p. 91)."

(b) the following sentence is inserted before the last sentence:

"Where only part of a product or waste, such as waste equipment, contains or is contaminated with persistent organic pollutants, it shall be separated and then disposed of in accordance with the requirements of this Regulation."

(b) In Part 2 footnote 6 is replaced by the following:

"(6) The limit is calculated as PCDD and PCDF according to the following toxic equivalency factors (TEFs):

PCDD	TEF
2,3,7,8-TeCDD	1
1,2,3,7,8-PeCDD	1
1,2,3,4,7,8-HxCDD	0.1
1,2,3,6,7,8-HxCDD	0.1
1,2,3,7,8,9-HxCDD	0.1
1,2,3,4,6,7,8-HpCDD	0.01
OCDD	0.0003
PCDF	TEF
2,3,7,8-TeCDF	0.1
1,2,3,7,8-PeCDF	0.03
2,3,4,7,8-PeCDF	0.3
1,2,3,4,7,8-HxCDF	0.1
1,2,3,6,7,8-HxCDF	0.1
1,2,3,7,8,9-HxCDF	0.1
2,3,4,6,7,8-HxCDF	0.1
1,2,3,4,6,7,8-HpCDF	0.01
1,2,3,4,7,8,9-HpCDF	0.01
OCDF	0.0003

".