



**COUNCIL OF
THE EUROPEAN UNION**

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NOTE

from : General Secretariat
to : Permanent Representatives Committee (part 1)

Previous Doc. 14419/06 ENT 124 ENV 569 CODEC 1173 OC 826
No. Cion prop. : 6693/06 ENT 39 ENV 118 CODEC 179

Subject : Proposal for a directive of the European Parliament and of the Council amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury.
- Political agreement

COMMON GUIDELINES
Consultation deadline for Bulgaria and Romania: 12.12.2006

1. On 21 February 2006 the Commission presented its proposal.¹
2. The Working Party Technical Harmonisation ("Dangerous Substances") has examined at several meetings in 2006 the Commission proposal as well as a number of draft amendments of the European Parliament to the Commission proposal.

¹ Doc. 6639/06 ENT 39 ENV 118 CODEC 179

Following informal meetings held between the European Parliament, the Presidency and the Commission, a draft compromise package was prepared, the content of which was acceptable to both the Commission and the European Parliament rapporteur as well as to the two shadow rapporteurs.

3. On 31 October 2006 the Permanent Representatives Committee approved the draft compromise package (doc. 14419/06).
4. The European Parliament adopted on 14 November 2006 its Opinion at first reading². This Opinion includes not only the compromise package, but also one amendment granting an unlimited derogation to barometers manufacturers together with licensing mechanisms to be established by Member States, and some mutually incompatible amendments. The text of the legislative resolution, rather than presenting the amendments one by one, sets out the text of the Commission Proposal, as amended.
5. The Presidency, aware that for many delegations some of these amendments are not acceptable, *inter alia* the amendment granting a perpetual derogation for barometers, has taken steps to verify whether delegations would support the text of the compromise agreed by COREPER on 31 October 2006 as a political agreement in view of a Common Position.

² Doc. 15181/06

To this end, the Presidency has conducted an informal consultation, asking if delegations could support the Presidency in this endeavour. DK and SE stated that they would vote against, PL noting a parliamentary scrutiny reservation.

The Permanent Representatives Committee is invited to reach a political agreement on the text set out in the Annex to this note and to recommend to the Council to adopt its Common Position on this basis at one of its forthcoming sessions as an "A" item, after finalisation of the text by the legal-linguistic experts.

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 95 thereof,

Having regard to the proposal from the Commission³,

Having regard to the opinion of the European Economic and Social Committee⁴,

Acting in accordance with the procedure laid down in Article 251 of the Treaty⁵,

Whereas:

The Commission communication of 28 January 2005 on the Community strategy concerning mercury⁶, which considered all uses of mercury, concluded that it would be appropriate to introduce Community-level marketing restrictions on certain non-electrical or electronic measuring and control equipment containing mercury, which is the main mercury product group not covered by Community action so far.

There would be benefits for the environment, and in the long term for human health, by preventing mercury from entering the waste stream, if limitations on the marketing of measuring devices containing mercury were introduced.

Taking into account technical and economic feasibility, available evidence concerning measuring and control devices indicates that *immediate* restrictive measures should cover only those measuring devices intended for sale to the general public and *all fever thermometers*.

(3a) *Import of mercury-containing measuring devices that are more than 50 years old concerns either antiques, or cultural goods as defined in Council Regulation No 3911/92 of 9 December 1992 on the export of cultural goods⁷. Such trade is limited in extent and seems to pose no risk to human health or the environment. Such trade should therefore not be restricted.*

³ OJ C xxx

⁴ *Opinion of 13 September 2006 (not yet published in the Official Journal).*

⁵ *Position of the European Parliament of 14 November 2006.*

⁶ COM (2005) 20 final, 28.1.2005

⁷ *OJ L 395, 31.12.1992, p. 1. Regulation as last amended by Regulation (EC) No 806/2003 (OJ L 122, 16.5.2003, p. 1).*

(3b) Today, mercury barometers are manufactured only by a few small specialist enterprises, and they are sold to the general public mainly as decorative items. An additional phase-out period should be provided for the placing on the market of barometers to allow the manufacturers to adapt their businesses to the restriction and to transfer into the production of mercury-free barometers.

(3c) With the aim of minimising the releases of mercury to the environment and to ensure the phase out of the remaining measuring instruments containing mercury in professional and industrial use, especially sphygmomanometers in healthcare, the Commission should carry out a review of the availability of safer alternative solutions that are technically and economically feasible. In the case of sphygmomanometers in healthcare, medical experts should be consulted to ensure that the needs in terms of diagnosis and treatment of specific medical conditions are adequately addressed.

By the present Directive only the placing on the market of new measuring devices should be restricted. This restriction should therefore not apply to devices that are already in use, or sold second hand.

The disparities between the laws or administrative measures adopted by Member States as regards restriction on mercury in various measuring and control devices could create barriers to trade, distort competition in the Community and may thereby have a direct impact on the establishment and functioning of the internal market. It therefore appears necessary to approximate the laws of Member States in the field of measuring and control devices by introducing harmonised provisions with regard to those products containing mercury thus preserving the internal market whilst ensuring a high level of protection of human health and the environment.

Council Directive 76/769/EEC⁸ of 27 July 1976 on the approximation of the laws, regulations and administrative provisions of the Member States relating to restrictions on the marketing and use of certain dangerous substances and preparations should be amended accordingly.

This Directive should apply without prejudice to Community legislation laying down minimum requirements for the protection of workers contained in Council Directive 89/391/EEC⁹ of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work and individual directives based thereon, in particular Council Directive 98/24/EC¹⁰ of 7 April 1998 on the protection of workers from the risks related to chemical agents at work.

In accordance with point 34 of the Interinstitutional agreement on better law-making¹¹, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures and to make them public.

⁸ OJ L 262, 27.9.1976, p. 201 Directive as last amended by Commission Directive 2004/98/EC (OJ L 305, 1.10.2004, p. 63)

⁹ OJ L 183, 29.6.1989, p. 1. Directive as amended by Regulation (EC) No 1882/2003 of the European Parliament and of the Council (OJ L 284, 31.10.2003, p. 1)

¹⁰ OJ L 131, 5.5.1998, p. 11-23.

¹¹ OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Annex I to Directive 76/769/EEC is amended as set out in the Annex to this Directive.

Article 2

1. Member States shall adopt and publish, by [one year after the date of its entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith **inform** the Commission **thereof**.

They shall apply those provisions from [eighteen months after the entry into force of this Directive].

When Member States adopt those provisions, the provisions shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 4

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

The following point is inserted in Annex I of Directive 76/769/EEC:

<p>“19a Mercury CAS N° 7439-97-6</p>	<p>(1) May not be placed on the market:</p> <ul style="list-style-type: none">(a) in fever thermometers;(b) in other measuring devices intended for sale to the general public (e.g. manometers, barometers, sphygmomanometers, thermometers other than fever thermometers). <p>(2) <i>By way of derogation the restriction in paragraph (1)(b) shall not apply to:</i></p> <ul style="list-style-type: none"><i>(a) measuring devices that are more than 50 years old on [the date of the entry into force of this Directive];</i><i>or</i><i>(b) barometers (except barometers within paragraph (a)) until [two years after the date of entry into force of this Directive].</i> <p>(3) <i>By [two years after the date of entry into force of this Directive] the Commission shall carry out a review of the availability of reliable safer alternatives that are technically and economically feasible for mercury-containing sphygmomanometers and other measuring devices in healthcare and in other professional and industrial uses.</i></p> <p><i>On the basis of this review or as soon as new information on reliable safer alternatives for sphygmomanometers and other measuring devices containing mercury becomes available, the Commission shall, if appropriate, present a legislative proposal to extend the restrictions in paragraph 1 to sphygmomanometers and other measuring devices in healthcare, and other professional and industrial uses, so that mercury in measuring devices is phased out whenever technically and economically feasible.”</i></p>
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