



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 30 March 2007
(OR. en)**

5665/07

**Interinstitutional File:
2006/0018 (COD)**

**ENT 10
ENV 48
CODEC 71**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Common position adopted by the Council with a view to the adoption of 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

**DIRECTIVE 2007/.../EC OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

of

**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 Commission,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the procedure laid down in Article 251 of the Treaty²,

¹ OJ C 318, 23.12.2006, p. 115.

² Opinion of the European Parliament of 14 November 2006 (not yet published in the Official Journal), Council Common Position of ... (not yet published in the Official Journal) and Position of the European Parliament of (not yet published in the Official Journal).

Whereas:

- (1) The Commission communication of 28 January 2005 on the Community strategy concerning mercury, which considered all uses of mercury, concluded that it would be appropriate to introduce Community-level marketing restrictions on certain non-electrical or non-electronic measuring and control equipment containing mercury, which is the main mercury product group not covered by Community action so far.
- (2) There would be benefits for the environment, and in the long term, for human health, through preventing mercury from entering the waste stream, if restrictions on the marketing of measuring devices containing mercury were introduced.
- (3) Taking into account technical and economic feasibility, the available evidence concerning measuring and control devices indicates that immediate restrictive measures should cover only those measuring devices that are intended for sale to the general public and, in particular, all fever thermometers.
- (4) The import of mercury-containing measuring devices that are more than fifty years old concerns either antiques, or cultural goods as defined in Council Regulation (EEC) No 3911/92 of 9 December 1992 on the export of cultural goods¹. Such trade is limited in extent and seems to pose no risk to human health or the environment and should therefore not be restricted.

¹ 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).

- (5) At present, mercury barometers are manufactured by only a few small specialist enterprises, and they are sold to the general public mainly as decorative items. An additional phasing-out period should be provided for the placing on the market of such barometers so as to allow the manufacturers to adapt their business in line with the restrictions and move over to the production of mercury-free barometers.
- (6) With the aim of minimising the release of mercury into the environment and in order to ensure the phasing-out of the remaining measuring devices containing mercury in professional and industrial use, especially sphygmomanometers in healthcare, the Commission should carry out a review of the availability of reliable safer alternatives 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.
- (7) In accordance with this 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.

- (8) 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 for human health and the environment.
- (9) Council Directive 76/769/EEC 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 preparations¹ should be amended accordingly.
- (10) This Directive should apply without prejudice to Community legislation laying down minimum requirements for the protection of workers contained in Council Directive 89/391/EEC of 12 June 1989 on the introduction of measures to encourage improvements in the safety and health of workers at work² and individual directives based thereon, in particular Council Directive 98/24/EC of 7 April 1998 on the protection of the health and safety of workers from the risks related to chemical agents at work³.

¹ OJ L 262, 27.9.1976, p. 201. Directive as last amended by Commission Directive 2006/139/EC (OJ L 384, 29.12.2006, p. 94).

² 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).

³ OJ L 131, 5.5.1998, p. 11.

- (11) In accordance with point 34 of the Interinstitutional agreement on better law-making¹, 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,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

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

Article 2

1. Member States shall adopt and publish, not later than ...^{*}, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

They shall apply these measures from ...^{**}.

When Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication.

The methods of making such reference shall be laid down by Member States.

¹ OJ C 321, 31.12.2003, p. 1.

^{*} Note to OJ: one year after the date of entry into force of this Directive.

^{**} Note to OJ: eighteen months after the date of entry into force of this Directive.

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 ,

For the European Parliament

The President

For the Council

The President

ANNEX

The following point is inserted in Annex I to 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. The restriction in paragraph (1)(b) shall not apply to:</p> <ul style="list-style-type: none">(a) measuring devices that are more than fifty years old on ...[*]; or(b) barometers (except barometers within point (a)) until ...^{**}. <p>3. By ...^{**} 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.</p> <p>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."</p>
--	---

* Note to OJ: the date of entry into force of this Directive.

** Note to OJ: two years after the date of entry into force of this Directive.