



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 27 October 2006**

**14419/06**

---

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

---

**ENT 124  
ENV 569  
CODEC 1173  
OC 826**

**REPORT**

---

from : General Secretariat  
to : Permanent Representatives Committee (Part 1)  
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.  
- Examination of a Presidency compromise text with a view to agreement

**COMMON GUIDELINES**  
**Consultation deadline for Bulgaria and Romania: 31 October 2006**

---

On 21 February 2006 the Commission presented its proposal.<sup>1</sup>

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.

---

<sup>1</sup> 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 is acceptable to both the Commission and to the European Parliament rapporteur and two shadow rapporteurs.

Delegations were consulted on a preliminary version of the draft compromise package at the meeting of the Working Party Technical Harmonisation ("Dangerous Substances") on 24 October 2006, where most delegations agreed on a very limited number of changes to the Presidency compromise draft. An amended draft according to the wishes of the delegations was then sent to the European Parliament's rapporteurs. On 27 October, the General Secretariat was informed that the rapporteur and two shadow rapporteurs could accept the draft compromise.

Denmark, Ireland, Italy, Poland, Sweden, and the Netherlands have entered a general reservation. Austria, Belgium, Portugal, Spain and the United Kingdom noted a scrutiny reservation.

Denmark has a reservation as they would like to see an immediate interdiction of mercury in sphygmomanometers and to have all professional and industrial use covered.

Ireland noted a reservation on the 2 years period for the review.

Italy has a scrutiny reservation on the duration of the derogations (Point 1.b of the Annex to the Regulation).

Malta has entered a Parliamentary scrutiny reservation.

Poland noted a general reservation because of the transposition deadline, believing it too short.

Sweden has a reservation as they would like to maintain their more restrictive national legislation.

The European Parliament has placed this item on the agenda of its forthcoming November I plenary session (13-16 November). The deadline for tabling amendments prior to the plenary session has been set at 8 November 2006.

**The Permanent Representatives Committee is invited to approve the compromise package, as set out in the Annex to this document under “Amendments proposed by the Presidency”, with a view to reaching a first reading agreement with the European Parliament.**

---

**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**

COM(2006)0069 – C6-0064/2006 – 2006/0018(COD)

The Commission Proposal	Amendments proposed by the Committee on the Environment, Public Health and Food Safety of the European Parliament	Amendments proposed by the Presidency
<p>TITLE</p> <p>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</p>	<p>No amendment</p>	<p>No amendment</p>
<p>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 Committee , Acting in accordance with the procedure laid down in Article 251 of the Treaty , Whereas:</p>	<p>No amendment</p>	<p>No amendment</p>
<p>(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 electronic measuring and control equipment containing mercury, which is the main mercury product group not covered by Community action so far.</p>	<p>No amendment</p>	<p>No amendment</p>

The Commission Proposal	Amendments proposed by the Committee on the Environment, Public Health and Food Safety of the European Parliament	Amendments proposed by the Presidency
(2) There would be benefits for the environment, and in 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.	No amendment	No amendment
(3) Taking into account technical and economic feasibility, available evidence concerning measuring and control devices indicates that restrictive measures should cover only those measuring devices intended for sale to the general public and <i>in one area of the healthcare sector.</i>	No amendment	(3) Taking into account technical and economic feasibility, available evidence concerning measuring and control devices indicates that <i>immediate</i> restrictive measures should cover only those measuring devices intended for sale to the general public and <i>all fever thermometers.</i>
		<p><i>(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 3911/92/EEC. 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.</i></p> <p><i>(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.</i></p>
	<p><i>(3a) With a view to minimising releases of mercury to the environment, restrictive measures should also be taken after a transition period for the remaining measuring devices not intended for the general public when safer mercury-free alternatives are available.</i></p> <p>EP am. 1</p>	<p><i>(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 health care, the Commission should make a review on the availability of safer alternative solutions that are technically and economically feasible. In the case of sphygmomanometers in health care, medical experts should be consulted to ensure that the needs of</i></p>

The Commission Proposal	Amendments proposed by the Committee on the Environment, Public Health and Food Safety of the European Parliament	Amendments proposed by the Presidency
		<i>diagnosis and treatment of specific medical conditions are adequately addressed.</i>
(4) 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.		No amendment
	<i>(4a) Exemptions may be authorised in cases where alternative solutions are not yet available, as well as in the rare case of the maintenance of traditional barometers, museum collections and industrial heritage;</i> EP am. 2	
(5) 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.	No amendment	No amendment
(6) 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 preparations should be amended accordingly.	No amendment	No amendment
(7) 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 work and individual directives based thereon, in	No amendment	No amendment

The Commission Proposal	Amendments proposed by the Committee on the Environment, Public Health and Food Safety of the European Parliament	Amendments proposed by the Presidency
particular Council Directive 98/24/EC of 7 April 1998 on the protection of workers from the risks related to chemical agents at work.		
	<p><i>(7a) The Commission should take measures in the short term to ensure that all products (not just electrical and electronic equipment) containing mercury and currently circulating in society are collected separately and safely treated.</i></p> <p>EP am. 3</p>	
	<p><i>(7b) The Commission should take measures in the short term to ensure that all products (not just electrical and electronic equipment) containing mercury and that fall under the exemption categories are correctly labelled.</i></p> <p>EP am. 4</p>	
		<p><i>(8) In accordance with paragraph 34 of the Interinstitutional agreement on better law-making<sup>1</sup>, Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables, which will, as far as possible, illustrate the correlation between this Directive and the transposition measures and to make them public.</i></p> <p><sup>1</sup> OJ C 321, 31.12.2003, p. 1.</p>
HAVE ADOPTED THIS DIRECTIVE:		
<p><i>Article 1</i> Annex I to Directive 76/769/EEC is amended as set out in the Annex to this Directive.</p>	No amendment	No amendment
<p><i>Article 2</i> 1. Member States shall adopt and publish, by xx xx 200x</p>	No amendment	<p><i>Article 2</i> 1. Member States shall adopt and publish, by xx xx 200x [one</p>

The Commission Proposal	Amendments proposed by the Committee on the Environment, Public Health and Food Safety of the European Parliament	Amendments proposed by the Presidency
<p>[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 communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.</p> <p>They shall apply those provisions from xx xx 200x [eighteen months after the entry into force of this Directive].</p> <p>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.</p> <p>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.</p>		<p>year after the date of its entry into force] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. <b>They shall forthwith inform the Commission thereof.</b></p> <p>No amendment</p> <p>No amendment</p> <p>No amendment</p>
<p><i>Article 3</i> This Directive shall enter into force on the day of its publication in the <i>Official Journal of the European Union</i>.</p>	No amendment	No amendment
<p><i>Article 4</i> This Directive is addressed to the Member States.</p>	No amendment	No amendment
<p><b><u>ANNEX</u></b></p> <p>The following point 19a is inserted in Annex I of Directive 76/769/EEC:</p>	No amendment	No amendment
<p><i>Left column</i></p> <p>“19a Mercury, CAS N° 7439-97-6</p>	No amendment	No amendment

The Commission Proposal	Amendments proposed by the Committee on the Environment, Public Health and Food Safety of the European Parliament	Amendments proposed by the Presidency
<p><i>Right column</i></p> <p>May not be placed on the market: (1) in fever thermometers</p>	<p>No amendment</p>	<p>(1) May not be placed on the market: a) in fever thermometers</p>
<p>(2) in other measuring devices intended for sale to the general public (e.g. manometers, barometers, sphygmomanometers, thermometers other than fever thermometers). ”</p>	<p><i>(1a) By way of derogation, points (1) and (2) shall not apply to:</i> <i>(a) antique barometers and scientific instruments intended for sale or trade in the international antiques market;</i> <i>(b) the production of traditional barometers using small quantities of mercury in carefully controlled and licensed environments.</i> EP am 5</p>	<p>b) in other measuring devices intended for sale to the general public (e.g. manometers, barometers, sphygmomanometers, thermometers other than fever thermometers).</p> <p><u>(2) By way of derogation the restriction in paragraph (1)(b) shall not apply to:</u> <u>a) measuring devices that are more than 50 years old on [the date of the entry into force of this Directive];</u> <u>or</u> <u>b) barometers (except barometers within paragraph (a)) until [two years after the date of entry into force of this Directive].</u></p>
	<p><i>(2a) in other measuring devices not intended for sale to the general public after ... *</i></p> <p><i>Manufacturers may request a derogation from point 2a before ... **. A derogation shall be granted for essential uses for a limited period of time, to be set on a case-by-case basis, if manufacturers can prove that they have undertaken every effort to develop safer alternatives or alternative processes, and that safer alternatives or alternative processes are still not available.</i></p> <p><i>* Three years after entry into force of this Directive.</i></p> <p><i>** Eighteen months after entry into force of this Directive.</i></p> <p>EP am 6</p>	<p><u>(3) By [two years after the date of entry into force of this Directive] the Commission shall make a review on 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.</u></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 will be 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>

The Commission Proposal	Amendments proposed by the Committee on the Environment, Public Health and Food Safety of the European Parliament	Amendments proposed by the Presidency
	<p><i>(2b) in all measuring and control equipment for consumer and professional use (especially households, healthcare facilities and schools), allowing time limited exemptions where safer and economically feasible alternatives, producing an equivalent level of precision and reliability, are not yet available.</i></p> <p>EP am. 7</p>	
	<p><i>(2c) in sphygmomanometers (excepting strain gauges in healthcare) containing mercury for both consumer and healthcare use.</i></p> <p>EP am. 8</p>	