

P6_TA(2006)0483

Measuring devices containing mercury *I**

European Parliament legislative resolution on the 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))

(Codecision procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0069)¹,
 - having regard to Article 251(2) and Article 95 of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0064/2006),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A6-0287/2006),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and Commission.

¹ Not yet published in OJ.

Position of the European Parliament adopted at first reading on 14 November 2006 with a view to the adoption of Directive 2006/.../EC 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 *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,

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, by preventing mercury from entering the waste stream, if limitations on the marketing of measuring devices containing mercury were introduced.

¹ *Opinion of 13 September 2006 (not yet published in the Official Journal).*

² *Position of the European Parliament of 14 November 2006.*

- (3) 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*.
- (4) *Import of mercury-containing measuring devices that are more than 50 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. Such trade should therefore not be restricted.*
- (5) *With the aim of minimising the release 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.*

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).

- (6) *This Directive is intended to restrict only the placing on the market of new measuring devices. This restriction should therefore not apply to devices that are already in use, or those which have already been placed on the market.*
- (7) 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.
- (8) 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.
- (9) 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 workers from the risks related to chemical agents at work³.
- (10) *In accordance with point 34 of the Interinstitutional Agreement on better law-making⁴, 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:

¹ OJ L 262, 27.9.1976, p. 201. Directive as last amended by Directive 2005/90/EC of the European Parliament and of the Council (OJ L 33, 4.2.2006, p. 28).

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.

⁴ OJ C 321, 31.12.2003, p. 1.

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 ...* 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 *these measures from ...***.

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

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

* One year after the date of entry into force of this Directive.

** Eighteen months after the date of entry into force of this Directive.

ANNEX

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

<p>“19a</p> <p>Mercury</p> <p>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 <i>thermometers</i>; (b) in other measuring devices intended for sale to the general public (e.g. manometers, barometers, sphygmomanometers, thermometers other than fever <i>thermometers</i>); (c) <i>in other measuring devices not intended for sale to the general public, after ...*</i>; (d) <i>in sphygmomanometers (excepting strain gauges in healthcare) containing mercury for both consumer and healthcare use.</i> <p><i>Manufacturers may request a derogation from point (c) 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>(2) <i>By way of derogation the restriction in paragraph 1(b) shall not apply to:</i></p> <ul style="list-style-type: none"> (a) <i>measuring devices that are more than 50 years old on ...***;</i> <p><i>or</i></p> <ul style="list-style-type: none"> (b) <i>barometers. Member States shall establish appropriate and effective mechanisms for licensing and controlling their placing on the market in order to ensure that the objectives of this Directive are not undermined.</i>
--	---

* *Three years after the date of entry into force of this Directive.*

** *Eighteen months after the date of entry into force of this Directive.*

*** *Date of entry into force of this Directive.*

	<p><i>(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.</i></p> <p><i>On the basis of this review or as soon as new information on reliable safer alternatives for mercury-containing sphygmomanometers and other measuring devices 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 in other professional and industrial uses, so that mercury in measuring devices is phased out whenever technically and economically feasible.</i></p>
--	--

* ***Two years after the date of entry into force of this Directive.***