

# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2006/0206(COD) Procedure completed
Dangerous substances, metallic mercury: banning of exports, safe storage Repealed by <a href="#">2016/0023(COD)</a>	
Subject 3.70.13 Dangerous substances, toxic and radioactive wastes (storage, transport) 6.20.02 Export/import control, trade defence, trade barriers	

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	<b>ENVI</b> Environment, Public Health and Food Safety		
	Former committee responsible		
	<b>ENVI</b> Environment, Public Health and Food Safety		
	Former committee for opinion		
	<b>INTA</b> International Trade <b>ITRE</b> Industry, Research and Energy	The committee decided not to give an opinion.	
Former committee for opinion on the legal basis			
<b>JURI</b> <a href="#">Legal Affairs</a>			26/02/2007
		PSE <a href="#">MEDINA ORTEGA Manuel</a>	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>	<a href="#">2891</a>	25/09/2008
	<a href="#">Environment</a>	<a href="#">2842</a>	20/12/2007
	<a href="#">Environment</a>	<a href="#">2812</a>	28/06/2007
European Commission	Commission DG	Commissioner	
	<a href="#">Environment</a>	DIMAS Stavros	

Key events			
26/10/2006	Legislative proposal published	<a href="#">COM(2006)0636</a>	Summary
14/11/2006	Committee referral announced in Parliament, 1st reading		
03/05/2007	Vote in committee, 1st reading		Summary

11/06/2007	Committee report tabled for plenary, 1st reading	<a href="#">A6-0227/2007</a>	
19/06/2007	Debate in Parliament		
20/06/2007	Results of vote in Parliament		
20/06/2007	Decision by Parliament, 1st reading	<a href="#">T6-0267/2007</a>	Summary
20/12/2007	Council position published	<a href="#">11488/1/2007</a>	Summary
31/01/2008	Committee referral announced in Parliament, 2nd reading		
26/03/2008	Vote in committee, 2nd reading		Summary
02/04/2008	Committee recommendation tabled for plenary, 2nd reading	<a href="#">A6-0102/2008</a>	
20/05/2008	Debate in Parliament		
21/05/2008	Decision by Parliament, 2nd reading	<a href="#">T6-0214/2008</a>	Summary
25/09/2008	Act approved by Council, 2nd reading		
22/10/2008	Final act signed		
22/10/2008	End of procedure in Parliament		
14/11/2008	Final act published in Official Journal		

### Technical information

Procedure reference	2006/0206(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
	Repealed by <a href="#">2016/0023(COD)</a>
Legal basis	EC Treaty (after Amsterdam) EC 133; EC Treaty (after Amsterdam) EC 175-p1
Stage reached in procedure	Procedure completed
Committee dossier	ENVI/6/58043

### Documentation gateway

Legislative proposal		<a href="#">COM(2006)0636</a>	26/10/2006	EC	Summary
Document attached to the procedure		<a href="#">SEC(2006)1369</a>	26/10/2006	EC	
Document attached to the procedure		<a href="#">SEC(2006)1370</a>	26/10/2006	EC	
Committee draft report		<a href="#">PE384.513</a>	27/02/2007	EP	
Committee opinion	INTA	<a href="#">PE384.286</a>	20/03/2007	EP	
Economic and Social Committee: opinion, report		<a href="#">CES0607/2007</a>	25/04/2007	ESC	
Committee opinion	JURI	<a href="#">PE390.577</a>	11/06/2007	EP	

Committee report tabled for plenary, 1st reading/single reading		<a href="#">A6-0227/2007</a>	11/06/2007	EP	
Text adopted by Parliament, 1st reading/single reading		<a href="#">T6-0267/2007</a>	20/06/2007	EP	Summary
Commission response to text adopted in plenary		SP(2007)3798/2	18/07/2007	EC	
Council statement on its position		<a href="#">15746/2007</a>	29/11/2007	CSL	
Council position		<a href="#">11488/1/2007</a>	20/12/2007	CSL	Summary
Commission communication on Council's position		<a href="#">COM(2008)0044</a>	29/01/2008	EC	Summary
Committee draft report		<a href="#">PE400.707</a>	06/02/2008	EP	
Amendments tabled in committee		<a href="#">PE402.692</a>	05/03/2008	EP	
Amendments tabled in committee		<a href="#">PE404.387</a>	10/03/2008	EP	
Committee recommendation tabled for plenary, 2nd reading		<a href="#">A6-0102/2008</a>	02/04/2008	EP	
Text adopted by Parliament, 2nd reading		<a href="#">T6-0214/2008</a>	21/05/2008	EP	Summary
Commission opinion on Parliament's position at 2nd reading		<a href="#">COM(2008)0452</a>	08/07/2008	EC	Summary
Draft final act		<a href="#">03638/2008/LEX</a>	22/10/2008	CSL	
Follow-up document		<a href="#">COM(2010)0723</a>	07/12/2010	EC	Summary

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

#### Final act

[Regulation 2008/1102](#)  
[OJ L 304 14.11.2008, p. 0075](#) Summary

## Dangerous substances, metallic mercury: banning of exports, safe storage

**PURPOSE:** to ban the export of metallic mercury from the community and to introduce provisions for its safe storage.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**CONTENT:** this proposed Regulation is seeking to achieve three objectives. Firstly, to ban the export of mercury from the Community. Secondly to prevent the re-entry of mercury onto the market. Thirdly, to guarantee its safe storage. The Regulation is being proposed in a bid to contain the 'global pool' of mercury.

Mercury and its compounds are highly toxic to humans, animals and ecosystems. The EU's strategy on mercury, which is spelt out in its 2005 Communication (see INI/2005/2050) severely restricts but does not prohibit the use of mercury in the EU. The EU's strategy is to control the use of mercury subject to strict regulatory conditions. The main lines of action are: to reduce mercury emissions; to cut supply and demand and to protect against exposure – especially to methyl mercury found in fish. This strategy requires special conditions.

Global demand for mercury is declining. In the EU only the chlor-alkali industry remains a significant user of mercury. Yet, they too are progressively phasing out the use of mercury-containing cells. A main global supplier of mercury is the Spanish state-owned firm MAYASA, which supplies around 1000 tonnes of mercury (of the global 3 400 tonnes) per year. With the chlor-alkali industry beginning to phase out the use of mercury in cells, MAYASA is buying mercury from them, which it then re-sells. It is estimated that between now and 2020 some 12 000 tonnes of mercury will become available due to this phase-out. Hence the need to introduce provisions now which regulate and control the expected surplus of unused mercury.

Proposed provisions:

The proposal contains two basic elements: an export ban for metallic mercury and an obligation to store mercury in a way that is safe for human health and for the environment. The proposal responds to the principles of 'Better Legislation'. It is short, clear and avoids, as much as possible, grey areas subject to contradictory interpretations. In summary, the Commission is proposing:

- The introduction of an export ban on mercury as from 1 July 2011. Although controversial, the Commission has opted for this date since it is most likely to rally support from the majority of the Member States as well as from interested parties.
- Metallic mercury which is no longer used in the chlor-alkali industry; mercury gained from the cleaning of natural gas; and mercury gained as a by-product from non-ferrous mining and smelting operations, must be stored. It must be stored in a way that is safe for human health and for the environment.
- Metallic mercury (that might under normal circumstances would be considered as waste) will be allowed to be stored in appropriate containment. This means that it can be stored either in an underground salt mine specifically adopted to waste disposal or in a facility exclusively dedicated to and equipped for the temporary storage of metallic mercury prior to its final storage. This provision (Article 3) offers a number of derogations from existing EU legislation, namely: Directive 75/442/EEC on waste, Regulation 259/93/EC on waste shipments and Directive 1999/31/EC on the landfill of waste. What this means is that any 'waste' which contains mercury will be subject to the normal provisions. This provision, however, will allow the storage of metallic mercury (which is normally liquid) to derogate from the rules that would normally apply. This is being proposed on the grounds that one of the Regulation's main aims is to ensure that mercury does not re-enter the market and is therefore introducing additional provisions that deal specifically with the storage of mercury.
- Metallic mercury will be subject to safety assessments as set out in Decision 2003/33/EC. The safety assessment will then be submitted to the competent authorities for the temporary storage in a facility exclusively dedicated and equipped for the storage of metallic mercury. Requirements are being proposed that would allow for regular visual inspections of the containers and the installations of appropriate vapour detection equipment in order to detect any potential leaks.
- Provisions will be put in place that guarantee the exchange of information between the Member States.
- The Member States will be obliged to submit copies of permits and shall inform the Commission on the application and market effects of this Regulation in their territories.
- The Commission will report on the Regulation's application by 30 June 2015. The Commission will also keep the Council and Parliament abreast of progress in multilateral activities and negotiations on mercury.

## Dangerous substances, metallic mercury: banning of exports, safe storage

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The committee adopted the report drafted by Dimitrios PAPADIMOULIS (GUE/NGL, UK), and made some amendments to the proposal for a regulation on the banning of exports and the safe storage of metallic mercury. It made adjustments concerning the date of the export ban, the scope of the mercury ban, and included the import of mercury in the prohibition. Further changes relate to a safe storage solution for surplus mercury; and the establishment of a trade tracking system.

The main amendments made in committee were as follows: -

- whilst the Commission's proposal related to an export ban on metallic mercury, Parliament stated that the export and import of metallic mercury, cinnabar ore and mercury compounds with a mercury concentration above 5% weight by weight will be prohibited;
- the export ban will take effect from 1 December 2010 (rather than 1 July 2011) and the import ban from 1 July 2010. Member States should meet their own mercury requirements from recovery from waste and raw products. Furthermore, a new Article states that the export of mercury-containing products banned from sale or distribution within the EU shall be prohibited from 1 January 2010;
- Member States must ensure that metallic mercury that is no longer used in the chlor-alkali industry or is extracted from cinnabar ore, mercury recovered from the cleaning of natural gas and mercury recovered as a by-product from non-ferrous mining and smelting operations shall be transported and stored, and eventually disposed of within the Community, in a way that is safe for human health and the environment, in appropriate facilities that qualify for that purpose, accompanied by a safety assessment and the relevant permit, pursuant to the Regulation;
- prior to any other alternative, consideration must be given to the possibility of using Almadén for the safe storage of the existing metallic mercury stocks or metallic mercury sub-produced by industry all over Europe, but not mercury containing articles that have become waste, thus making use of the infrastructures, local manpower and technological expertise existing there;
- the Commission shall undertake a revision of the safety assessment referred to in Decision 2003/33/EC to ensure that the particular risks of temporary storage of metallic mercury arising from the nature and long-term behaviour of the metallic mercury and its containment are covered. This revision shall be completed six months before the entry into force of the export ban;
- during the temporary storage, responsibility shall lie with the owner of the storage facility. Member States are requested to set up a fund to ensure that financial resources are in place for the safe final disposal of mercury. The fund will be created on the basis of a financial contribution by the chlor-alkali industry and other mercury using industries, such as, the natural gas and non-ferrous industry, proportional to the amount of mercury sent for temporary storage. When the mercury is to be sent for final disposal, Member States shall assume the administrative and financial responsibility;
- the companies concerned in the chloralkali industry, and in the industry sectors that gain mercury from the cleaning of natural gas or as a by-product from nonferrous mining and smelting operations, shall send sets of certain prescribed data related to the decommissioning of mercury in a given year to the Commission and the competent authorities of the Member States concerned;
- the Commission must organise an initial exchange of information between Member States and the relevant stakeholders by 30 June 2010, and this exchange must, inter alia, analyse the results of the consideration given to Almadén as the site for the safe storage of existing metallic mercury stocks or metallic mercury subproduced by European industry;

- Member States will draw up a register of buyers, sellers and traders of mercury, cinnabar ore and mercury compounds, and collect relevant information. They must inform the Commission on the application and market effects of this Regulation in their respective territory every two years, within six months from the end of the period covered. The Commission shall publish the information in a concise report within one year from the submission by the Member States. The first set of information shall cover the years 2007 - 2008 and shall be submitted to the Commission by 30 June 2009, and made public by 30 June 2010. The committee felt that such a tracking system will ensure transparency of the trade, and allow developments that run contrary to the intention and effectiveness of the ban to be easily assessed by the Commission and stakeholders;

- Member States are required to lay down the rules on penalties applicable to infringements of

the provisions of the Regulation;

- the Commission and the Member States shall promote and facilitate awareness and ensure public availability of information on the export ban on metallic mercury, cinnabar ore and mercury compounds, as well as the safe storage of metallic mercury;

- the Commission shall submit a report to the European Parliament and the Council by 30 June 2012 at the latest. It must report by 31 December 2009 at the latest on progress in multilateral activities and negotiations on mercury;

- lastly, the committee felt that using a double legal base, i.e. Articles 133 and 175(1) of the Treaty, was not justified, since the measure is motivated by the objectives of protecting human health and the environment, and accordingly, it retained only Article 175(1) as the legal base.

## Dangerous substances, metallic mercury: banning of exports, safe storage

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The European Parliament adopted the resolution drafted by Dimitrios Papadimoulis (EUL-NGL, Greece), and made some amendments to the proposal for a regulation on the banning of exports and the safe storage of metallic mercury. The report was adopted by 673 votes in favour to 14 against with 9 abstentions. Parliament endorsed the amendments made by its competent committee (please see the summary of 03/05/2007) and added the following:

- the possibilities for locations for the temporary storage of metallic mercury were expanded;

- the Commission and the Member States shall, taking into account in particular the needs of affected developing countries and countries with economies in transition, cooperate in promoting technical assistance, including training, for the development of the infrastructure, the capacity and the expertise necessary in order to make progress in the shift towards alternative mercury-free technologies and to eventually phase out uses and releases of mercury and mercury compounds;

- the Commission and the Member States shall also consider giving support to NGOs, which have been especially efficient in delivering those kinds of services.

## Dangerous substances, metallic mercury: banning of exports, safe storage

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The common position incorporates a number of the European Parliament's first-reading amendments, either verbatim, in part or in spirit. In particular, it provides for a broad review of needs for a future possible extension of the scope of the Regulation and introduces additional safety requirements for the disposal of metallic mercury. It also includes a number of other changes clarifying the text and the application of relevant EC legislation. In brief, the following changes have been made:

Mercury export ban - scope and review:

The scope of the Regulation and the date of the export ban (as set out in Article 1) corresponds with provisions proposed by the Commission in its initial proposal. The common position partially reflects amendments proposed by Parliament in that it provides for a review, the aim of which is the future possible extension of the scope for mercury compounds, products containing mercury, import ban of mercury, mercury compounds and products containing mercury.

Disposal obligations:

Article 2 of the initial proposal states that metallic mercury, from the three most important mining in the Community, will need to be disposed of in accordance with Directive 3006/12/EC on waste. As such the Council has decided not to accept three Amendments (24, 31 and 6) given that there is no justification for prioritising one particular option when it comes to the storage of metallic mercury.

Conditions of metallic mercury disposal:

Article 3 of the common position extends the storage options for metallic mercury that qualifies as waste for deep, underground, hard rock formations. This extension includes both temporary and permanent solutions. Additional safety requirements for the storage of metallic mercury are also included. The Council agrees with the Commission that, under certain conditions, the permanent storage of metallic mercury is a safe disposal option. At the same time, however, the Council agrees that research activities on safe disposal options for metallic mercury should be reviewed.

Amendment 41 was not accepted by the Council since it weakens the safety requirements for storage of metallic mercury. Pursuant to Article 2(g) of Directive 1999/31/EC on the landfill of waste, storage of waste for disposal for a period of less than one year is not considered as landfill of waste. There is therefore no prohibition on the temporary storage of metallic mercury in liquid form as waste up to a period of one year, including in installations for the production of chlorine, which are subject to the provisions of Directive 96/61/EC (IPPC). The IPPC Directive governs the environmental permit for a facility and is not sufficient to ensure the safety requirements for the storage of metallic mercury.

Reporting and sanctions

Amendments that concerned: i) a special fund for mercury storage, ii) extending and tightening Member States', companies' and the Commission's reporting obligations, and iii) awareness raising in Member States have not been accepted. This is because the Council

considers the Parliamentary proposed provisions are both disproportionate and are likely to increase bureaucracy unnecessarily. Amendments concerning applicable infringement penalties, on the other hand, have been accepted in full by the Council.

To conclude, the Council believes that the common position represents a balanced package that respects the Regulation's objectives and it looks forward to constructive discussions with the European Parliament with a view to the early adoption of the Regulation.

## Dangerous substances, metallic mercury: banning of exports, safe storage

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The changes introduced by the Council in its common position are acceptable to the Commission given that they are limited to tightening the safety conditions for the storage of mercury and to an increase in reporting requirements. They do not extend the scope of the Proposal. Therefore the Commission can accept the common position in its entirety.

To recall, the Commission accepted in full, in part or in principle 8 of the 40 amendments adopted by the European Parliament in its first reading. Two of these amendments have now been incorporated, either verbatim or in spirit, in the common position.

The amendments accepted by the Commission were on:

- penalties,
- an expansion of the information exchange, and
- bringing minor changes in wording to the recitals.

The Commission did not, however, accept amendments which:

- changed the legal base of the Proposal,
- expanded its scope,
- changed the date for entry into effect of the export ban,
- limited the storage of metallic mercury to temporary storage only,
- granted preferential treatment for the Almadén site, and
- supported measures for developing countries and NGOs.

The Council has agreed to incorporate, with a slightly different wording, the Parliamentary amendments introducing a provision on penalties.

To conclude, the Commission considers that the common position does not alter the approach or aims of the Proposal and can thus support it as it stands.

## Dangerous substances, metallic mercury: banning of exports, safe storage

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The Committee on the Environment, Public Health and Food Safety adopted the recommendation for second reading in the report by Dimitrios PAPANICOLAOU (GUE/NGL, EL), amending the common position of the Council on the adoption of the Regulation of the European Parliament and of the Council on the banning of exports and the safe storage of metallic mercury.

The majority of the amendments adopted are taken from the 1<sup>st</sup> reading:

- while the Council plans to ban exports of metallic mercury only, MEPs ask that this ban also apply to cinnabar ore, mercury compounds and certain mercury-containing products;

- the export of metallic mercury should be banned as from 1 December 2010, i.e. 7 months before the date proposed by the Commission and the Council (1 July 2011);

- although the Commission and the Council propose that the ban be limited to exports, MEPs believe that the export ban should be complemented by a similar import ban applicable at the same time as the export ban, i.e. 1 December 2010. Member States should meet their own mercury requirements from recovery from waste and raw materials;

- from 1 December 2010, metallic mercury that is no longer used in the chlor-alkali industry, mercury from the cleaning of natural gas and mercury as a by-product from non-ferrous mining and smelting operations shall be considered as stocked waste temporarily and then it will be disposed of within the Community. This disposal must take place in appropriate facilities that qualify for that purpose, accompanied by a safety assessment and the relevant permit, pursuant to this Regulation;

- prior to any other alternative, the parliamentary committee proposes considering the possibility of using Almadén for the safe storage of the existing metallic mercury stocks or metallic mercury sub-produced by industry all over Europe;

- during temporary storage, responsibility for safety shall lie with the owner of the storage facility. MEPs request that Member States set up a fund to ensure that financial resources are in place for the temporary storage and safe final disposal of mercury. The fund will be created on the basis of a financial contribution by the chlor-alkali industry and other mercury-using industries, with contributions proportional to the amount of mercury sent for temporary storage;

- Member States shall draw up a register of buyers, sellers and traders of mercury, cinnabar ore and mercury compounds, and collect relevant information. They shall inform the Commission on the application and market effects of this Regulation in their respective territory every two years, within six months from the end of the period covered. The Commission shall publish the information in a concise report within one year from the submission by the Member States;

- the Commission is asked to organise an initial exchange of information between Member States and the relevant stakeholders by 1 July 2010. This exchange of information should examine, from now to 1 July 2009, the research activities on the possibilities of safe disposal;

- taking into account the needs of the developing countries concerned and countries with economies in transition, the Commission and the Member States should cooperate in promoting technical assistance, including training, for the development of the infrastructure, the capacity and the expertise necessary in order to make progress in the shift towards alternative mercury-free technologies and to eventually phase out

the use and release of mercury and mercury compounds;

- the Commission is called on to submit a report to the European Parliament and the Council, by 30 June 2012 at the latest, accompanied by proposals for revision of the Regulation, if necessary;

- lastly, MEPs consider Article 175(1) of the EC Treaty to be the sole legal base of the proposal.

## Dangerous substances, metallic mercury: banning of exports, safe storage

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The European Parliament adopted, by a legislative resolution amending, in the second reading of the codecision procedure, the common position of the Council on the adoption of the Regulation of the European Parliament and of the Council on the banning of exports and the safe storage of metallic mercury. The recommendation for second reading had been tabled for consideration in plenary by Dimitrios PAPADIMOULIS (GUE/NGL, EL) on behalf of the Committee on the Environment, Public Health and Food Safety.

The main amendments, which are the result of a compromise between Parliament and Council, are as follows:

- the export of metallic mercury (Hg, CAS RN 7439-97-6), cinnabar ore, mercury (I) chloride (Hg<sub>2</sub>Cl<sub>2</sub>, CAS RN 10112-91-1), mercury (II) oxide (HgO, CAS RN 21908-53-2) and mixtures of metallic mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95% weight by weight from the Community shall be prohibited from 15 March 2011. Accordingly, the scope of the ban is expanded and will take effect three months earlier than proposed by Council;

-the prohibition shall not apply to exports of compounds referred to above for research and development, medical or analysis purposes. Furthermore, the mixing of metallic mercury with other substances for the sole purpose of export of metallic mercury shall be prohibited from 15 March 2011;

-Parliament's first-reading amendments banning mercury imports into the EU is not included in the compromise. However, the Commission shall organise an exchange of information between the Member States and the relevant stakeholders by 1 January 2010. This exchange of information shall, in particular, examine the need for, inter alia, extending the export ban to other mercury compounds, mixtures with a lower mercury content and products containing mercury, in particular thermometers, barometers and sphygmomanometers; and an import ban of metallic mercury, mercury compounds and products containing mercury. The exchange of information shall also consider the research on safe disposal options. The Commission shall organise further exchanges of information when new relevant information has become available;

-the companies concerned in the chlor-alkali industry shall send the following data related to the decommissioning of mercury in a given year to the Commission and the competent authorities of the Member States concerned: (a) best estimate of total amount of mercury still in use in chlor-alkali cell; (b) total amount of mercury stored in the facility; (c) amount of waste mercury sent to individual temporary or permanent storage facilities, location and contact details of these facilities;

-the companies concerned in the industry sectors that gain mercury from the cleaning of natural gas or as a by-product from non-ferrous mining and smelting operations shall provide the following data related to mercury gained in a given year to the Commission and the competent authorities of the Member States concerned: (a) amount of mercury gained, amount of mercury sent to individual temporary or permanent storage facilities; (b) location and contact details of these facilities;

-the companies concerned shall send the data referred to above for the first time one year after entry into force of the Regulation and thereafter each year before 31 May. The Commission shall make the information publicly available in accordance with Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies;

-the Commission shall submit a report on safe disposal options to the European Parliament and the Council by 1 January 2010. A proposal for a revision of the Regulation must be presented as soon as possible and not later than 15 March 2013;

-lastly, until 15 March 2011, Member States may maintain national measures restricting the export of metallic mercury, cinnabar ore, mercury (I) chloride, mercury (II) oxide and mixtures of metallic mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95% weight by weight which were adopted in line with Community legislation before the adoption of the Regulation.

## Dangerous substances, metallic mercury: banning of exports, safe storage

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At its Plenary Session of 21 May 2008, the European Parliament adopted a compromise package consisting of 22 amendments which had been agreed with the Council in view of reaching a second reading agreement. The Commission accepts all the amendments as they are in line with the overall purpose and the general characteristics of the proposal.

These amendments concern essentially:

- the scope of the export ban (extended to two mercury compounds and mixtures with a high mercury content, in order to prevent circumventing the export ban on metallic mercury);
- the date of the entry into effect of the export ban (15 March 2011 instead of 1 July 2011);
- the link of an information exchange and a report on safe disposal (solidification) options to the adoption of specific acceptance criteria under comitology;
- extended reporting requirements;
- an enhanced revision clause.

## Dangerous substances, metallic mercury: banning of exports, safe storage

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**PURPOSE:** to ban the exports of metallic mercury and ensure the safe storage of metallic mercury to reduce the risk of exposure to mercury for humans and the environment.

**LEGISLATIVE ACT:** Regulation (EC) No 1102/2008 of the European Parliament and of the Council on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury.

**CONTENT:** following the agreement reached at 2<sup>nd</sup> reading with the European Parliament, the Regulation states that the export of metallic mercury, cinnabar ore, mercury chloride, mercury oxide and mixtures of metallic mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 % weight by weight from the Community shall be prohibited from 15 March 2011. The mixing of metallic mercury with other substances for the sole purpose of export of metallic mercury shall be prohibited from the same date.

The prohibition shall not apply to exports of mercury compounds for research and development, medical or analysis purposes.

From 15 March 2011, the following shall be considered as waste and be disposed of in accordance with Directive 2006/12/EC of the European Parliament and of the Council:

- a) metallic mercury that is no longer used in the chlor-alkali industry;
- b) metallic mercury gained from the cleaning of natural gas;
- c) metallic mercury gained from non-ferrous mining and smelting operations; and
- d) metallic mercury extracted from cinnabar ore in the Community as from 15 March 2011.

The Commission shall organise an exchange of information between the Member States and the relevant stakeholders by 1 January 2010. This exchange of information shall, in particular, examine the need for:

- a) extending the export ban to other mercury compounds, mixtures with a lower mercury content and products containing mercury, in particular thermometers, barometers and sphygmomanometers;
- b) an import ban of metallic mercury, mercury compounds and products containing mercury;
- c) extending the storage obligation to metallic mercury from other sources;
- d) time limits concerning temporary storage of metallic mercury.

This exchange of information shall also consider the research on safe disposal options.

The Commission shall as soon as possible, but not later than 15 March 2013, submit to the European Parliament and the Council a report, if appropriate accompanied by a proposal for a revision of this Regulation, which shall reflect and evaluate the outcome of the information exchange.

**ENTRY INTO FORCE:** 04/12/2008.

## Dangerous substances, metallic mercury: banning of exports, safe storage

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The Communication on a [Community Strategy Concerning Mercury](#) was adopted by the Commission in 2005. The Strategy addresses most aspects of the mercury life cycle. Its key aim is to reduce mercury levels both in relation to human exposure and the environment. It identifies twenty priority actions to be undertaken, both within the EU and internationally. The Strategy was welcomed by Council Conclusions on 24 June 2005 as well as by a [European Parliament Resolution](#) on 14 March 2006.

The Commission expressed its intention to review the mercury strategy as a whole by the end of 2010. This review is based on the findings of an external study and other information available to the Commission. It also fulfils the Commission's obligation to report on progress in multilateral activities according to Regulation (EC) No 1102/2008 on the banning of exports of metallic mercury.

The Commission reports that the implementation of the Mercury Strategy is in an advanced stage, having delivered on almost all actions.

**Reduction of mercury emissions:** a new legal framework is now in place for large point sources. In the new Industrial Emissions Directive (IED), adopted in 2010, which will replace the IPPC Directive, the role of Best Available Techniques (BAT) and BAT associated emission levels (AEL) is strongly reinforced. They are now to be adopted by the Commission as BAT Conclusions and will have legal effect. The possibility of permitting authorities to deviate from the AEL levels will be restricted and subject to justification according to strict criteria set out in the Directive. It is expected that this will result in an accelerated replacement of mercury-based technologies and reduction of mercury emissions in a range of industrial sectors, in particular cement production, non-ferrous metal industries, large combustion plants, waste incineration and chlor-alkali manufacturing. However, this will require an ambitious transposition and implementation practice in the Member States which will be closely followed and supported by the Commission.

The report also notes that a study on options for reducing mercury emissions to air from small-scale combustion installations was finalised in December 2005. According to the findings of the study, this source was estimated to contribute 16% of the total EU mercury emissions. On the basis of these findings, the Commission, in its proposal for the IED, suggested reducing the threshold for the application of the rules applying to large combustion plants from a total rated input of 50 MW to 20 MW. However, the EU legislator maintained the 50 MW threshold and introduced in the Directive a clause requiring the Commission to review by end 2012 the need to control emissions below this threshold and if appropriate come forward with a legislative proposal. The Commission will follow up on this in due course.

**Demand for mercury in products:** Directive 2007/51/EC amended Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury. Fever thermometers as well as other mercury-containing measuring devices (e.g. manometers, barometers, sphygmomanometers, thermometers other than fever thermometers) intended for sale to the general public may no longer be placed on the market. The Directive includes a review clause for a possible extension of the existing restrictions to other measuring devices containing mercury. An extension of this marketing restriction to additional health care devices as well as to measuring devices intended for

professional and industrial use is presently under consideration. However, the legal framework has changed with Directive 76/769/EEC being repealed and further marketing restrictions now having to follow the procedures laid down in the REACH Regulation (EC) No 1907/2006. The above-mentioned directive 2007/51/EC has been included in Annex XVII of the REACH Regulation. The

European Chemicals Agency (ECHA) evaluated new scientific evidence and prepared a report proposing to further restrict mercury in measuring devices in healthcare and in other professional and industrial uses. The opinions of the relevant Committees under REACH are expected to be submitted to the Commission in September 2011. The Commission will subsequently decide whether and when the restrictions will enter into force in the EU. In a related development, SCENIHR has recently issued an opinion confirming that reliable alternatives to mercury sphygmomanometers in health care are available.

The Commission sees in particular the necessity to investigate more the issue of dental amalgam. The Commission services consulted two Scientific Committees on the use of dental amalgam. The opinions of both Committees were not conclusive regarding the appropriateness of additional regulatory measures to restrict the use of dental amalgam. However, given that some Member States have already substantially restricted the use of dental amalgam in their national health care systems and given that dental amalgam represents the second largest use of mercury in the EU, the Commission has decided to undertake a full lifecycle assessment of this mercury use. The results of this assessment are expected for the end of 2011.

International action is a priority for the coming years. Given the global aspect of the mercury problem, internal EU legislation alone cannot guarantee effective protection of the European citizen. The Commission therefore intends to focus its efforts on the negotiation of a global legally binding instrument on mercury under the auspices of UNEP. In this context, the EU has a lot to offer by having already effective instruments at EU level. Once this international instrument has taken shape, the European Commission will assess which aspects of the mercury life cycle should be subject to additional EU-specific action, including, if needed, additional legislative proposals, and taking into account the 2013 review of the Export Ban Regulation and further progress under the Strategy. This is particularly valid for the additional import and export restrictions suggested by the consultant's review study which need to be assessed against the background of internationally negotiated obligations.