



EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

Brussels, 5 September 2008
(OR. en)

2006/0206 (COD)

PE-CONS 3638/08

ENV 321
COMER 96
SAN 104
CODEC 649

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Regulation 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

In accordance with Article 251(3) of the EC Treaty,
this document will not be the subject of approval by the Council;
it is intended solely for the information of delegates

**REGULATION (EC) NO .../2008 OF THE EUROPEAN PARLIAMENT
AND OF THE COUNCIL**

of

on the banning of exports of metallic mercury and certain mercury compounds
and mixtures and the safe storage of metallic 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 175(1) thereof and, in relation to Article 1 of this Regulation, Article 133 thereof,

Having regard to the proposal from the Commission,

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

After consulting the Committee of the Regions,

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

¹ OJ C 168, 20.7.2007, p. 44.

² Opinion of the European Parliament of 20 June 2007 (OJ C 146 E, 12.6.2008, p. 209), Council Common Position of 20 December 2007 (OJ C 52 E, 26.2.2008, p. 1) and Position of the European Parliament of 21 May 2008 (not yet published in the Official Journal). Council Decision of ...

Whereas:

- (1) Mercury releases are recognised as a global threat that warrants action at local, regional, national and global level.
- (2) In accordance with the Communication from the Commission to the Council and the European Parliament entitled "Community Strategy Concerning Mercury", the Council conclusions of 24 June 2005 and the European Parliament's resolution of 14 March 2006¹ on the aforementioned strategy, it is necessary to reduce the risk of exposure to mercury for humans and the environment.
- (3) Measures taken at Community level must be seen as part of a global effort to reduce the risk of exposure to mercury, in particular in the framework of the Mercury Programme under the United Nations Environment Programme.
- (4) Environmental and social problems arise from the closure of mercury mines in the Community. The support of projects and other initiatives from the available funding mechanism should continue in order to allow the areas affected to find viable solutions for local environment, employment and economic activities.
- (5) 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 from the Community should be banned in order to significantly reduce the global mercury supply.

¹ OJ C 291 E, 30.11.2006, p. 128.

- (6) The export ban will result in considerable amounts of surplus mercury in the Community that should be prevented from re-entering the market. Therefore, the safe storage within the Community of this mercury should be ensured.
- (7) In order to provide for possibilities of safe storage of metallic mercury that is considered as waste, it is appropriate to derogate from Article 5(3)(a) of Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste¹ for certain types of landfill, and to declare the criteria set out in section 2.4 of the Annex to Council Decision 2003/33/EC of 19 December 2002 establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC² inapplicable for retrievable temporary storage of metallic mercury for more than one year in above-ground facilities dedicated to and equipped for this purpose.
- (8) The other provisions of Directive 1999/31/EC should apply to all storage facilities for metallic mercury that is considered as waste. This includes the requirement, set out in Article 8(a)(iv) of that Directive, that the applicant for a permit make adequate provision, by way of a financial security or any other equivalent, to ensure that the obligations (including after-care provision) arising under the permit are discharged and that the closure procedures are followed. Furthermore, Directive 2004/35/EC of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage³ applies to such storage facilities.

¹ OJ L 182, 16.7.1999, p. 1.
² OJ L 11, 16.1.2003, p. 27.
³ OJ L 143, 30.4.2004, p. 56.

- (9) For temporary storage of metallic mercury for more than one year in above-ground facilities dedicated to and equipped for this purpose, Council Directive 96/82/EC of 9 December 1996 on the control of major-accident hazards involving dangerous substances¹ should apply.
- (10) This Regulation should be without prejudice to Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste². Nevertheless, in order to allow appropriate disposal of metallic mercury in the Community, the competent authorities of destination and dispatch are encouraged to avoid raising objections to shipments of metallic mercury that is considered as waste based on Article 11(1)(a) of that Regulation. It is noted that, according to Article 11(3) thereof, in the case of hazardous waste produced in a Member State of dispatch in such a small quantity overall per year that the provision of new specialised disposal installations within that Member State would be uneconomic, Article 11(1)(a) thereof shall not apply.

¹ OJ L 10, 14.1.1997, p. 13.

² OJ L 190, 12.7.2006, p. 1.

- (11) In order to ensure storage that is safe for human health and the environment, the safety assessment required for underground storage under Decision 2003/33/EC should be complemented by specific requirements and should also be made applicable to non-underground storage. No final disposal operation should be permitted until the special requirements and acceptance criteria are adopted. The storage conditions in a salt mine or in deep underground, hard rock formations, adapted for the disposal of metallic mercury, should notably meet the principles of protection of groundwater against mercury, prevention of vapour emissions of mercury, impermeability to gas and liquids of the surroundings and – in case of permanent storage – of firmly encapsulating the wastes at the end of the mines' deformation process. Those criteria should be introduced in the annexes to Directive 1999/31/EC, when they are amended for the purpose of this Regulation.
- (12) The above-ground storage conditions should notably meet the principles of reversibility of storage, protection of mercury against meteoric water, impermeability towards soils and prevention of vapour emissions of mercury. Those criteria should be introduced in the annexes to Directive 1999/31/EC when they are amended for the purpose of this Regulation. The above-ground storage of metallic mercury should be considered as a temporary solution.
- (13) The chlor-alkali industry should send all relevant data related to the decommissioning of mercury cells in their plants to the Commission and the competent authorities of the Member States concerned to facilitate enforcement of this Regulation. The industry sectors that gain mercury from the cleaning of natural gas or as a by-product from non-ferrous mining and smelting operations should also provide the Commission and the competent authorities of the Member States concerned with relevant data. The Commission should make this information publicly available.

- (14) Member States should submit information on permits issued for storage facilities as well as on the application and the market effects of this Regulation, in order to allow for an assessment thereof in due time. Importers, exporters and operators should submit information on movements and use 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.
- (15) Member States should determine the penalties applicable to infringements of the provisions of this Regulation to be imposed on natural and legal persons. Those penalties should be effective, proportionate and dissuasive.
- (16) It is appropriate to organise an exchange of information with relevant stakeholders in order to assess the potential need for supplementary measures related to export, import and storage of mercury and to mercury compounds and products containing mercury without prejudice to the competition rules of the Treaty, in particular Article 81 thereof.
- (17) The Commission and the Member States should encourage the provision of technical assistance to developing countries and countries with economies in transition, especially assistance which facilitates the shift towards alternative mercury-free technologies and the eventual phase-out of uses and releases of mercury and mercury compounds.
- (18) Research is ongoing on the safe disposal of mercury, including the different techniques for stabilisation or other ways of immobilising mercury. The Commission should, as a matter of priority, keep this research under review and submit a report as soon as possible. This information is important as it will provide a sound basis for a review of this Regulation in order to achieve its objective.

- (19) The Commission should take this information into account when submitting an assessment report in order to identify possible needs for amending this Regulation.
- (20) The Commission should also follow international developments concerning mercury supply and demand, in particular multilateral negotiations, and report on these in order to enable the consistency of the overall approach to be assessed.
- (21) The measures necessary for the application of this Regulation concerning temporary storage of metallic mercury in certain facilities referred to herein should be adopted in accordance with Directive 1999/31/EC taking into account the direct link between this Regulation and that Directive.
- (22) Since the objective of this Regulation, namely to reduce of exposure to mercury by means of an export ban and a storage obligation, cannot be sufficiently achieved by the Member States, and can therefore, by reason of the impact on the movement of goods and the functioning of the internal market as well as the trans-boundary nature of mercury pollution, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

1. The export of metallic mercury (Hg, CAS RN 7439-97-6), cinnabar ore, mercury (I) chloride (Hg₂Cl₂, 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.
2. The prohibition shall not apply to exports of compounds referred to in paragraph 1 for research and development, medical or analysis purposes.
3. The mixing of metallic mercury with other substances for the sole purpose of export of metallic mercury shall be prohibited from 15 March 2011.

Article 2

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 of 5 April 2006 on waste¹ in a way that is safe for human health and the environment:

- (a) metallic mercury that is no longer used in the chlor-alkali industry;
- (b) metallic mercury gained from the cleaning of natural gas;

¹ OJ L 114, 27.4.2006, p. 9.

- (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.

Article 3

1. By way of derogation from Article 5(3)(a) of Directive 1999/31/EC, metallic mercury that is considered as waste may, in appropriate containment, be
 - (a) temporarily stored for more than one year or permanently stored (disposal operations D 15 or D 12 respectively, as defined in Annex II A of Directive 2006/12/EC) in salt mines adapted for the disposal of metallic mercury, or in deep underground, hard rock formations providing a level of safety and confinement equivalent to that of those salt mines, or
 - (b) temporarily stored (disposal operation D 15, as defined in Annex II A of Directive 2006/12/EC) for more than one year in above-ground facilities dedicated to and equipped for the temporary storage of metallic mercury. In this case, the criteria set out in section 2.4 of the Annex to Decision 2003/33/EC shall not apply.

The other provisions of Directive 1999/31/EC and Decision 2003/33/EC shall apply to points (a) and (b).

2. Directive 96/82/EC shall apply to storages as referred to in paragraph 1(b) of this Article.

Article 4

1. The safety assessment to be carried out in accordance with Decision 2003/33/EC for the disposal of metallic mercury according to Article 3 of this Regulation shall ensure that the particular risks arising from the nature and long-term properties of the metallic mercury and its containment are covered.
2. The permit referred to in Articles 8 and 9 of Directive 1999/31/EC for facilities referred to in Article 3(1)(a) and (b) of this Regulation shall include requirements for regular visual inspections of the containers and the installation of appropriate vapour detection equipment to detect any leak.
3. The requirements for facilities referred to in Article 3(1)(a) and (b) of this Regulation as well as acceptance criteria for metallic mercury, amending Annexes I, II and III of Directive 1999/31/EC, shall be adopted in accordance with the procedure referred to in Article 16 of that Directive. The Commission shall make an appropriate proposal as soon as possible, and at the latest by 1 January 2010, taking into account the outcome of the exchange of information pursuant to Article 8(1) and the report on research on safe disposal options pursuant to Article 8(2).

Any final disposal operation (disposal operation D 12, as defined in Annex II A of Directive 2006/12/EC) concerning metallic mercury shall only be permitted after the date at which the amendment of Annexes I, II and III of Directive 1999/31/EC has been adopted.

Article 5

1. Member States shall submit to the Commission a copy of any permit issued for a facility designated to store metallic mercury temporarily or permanently (disposal operations D 15 or D 12 respectively, as defined in Annex II A of Directive 2006/12/EC), accompanied by the respective safety assessment pursuant to Article 4(1) of this Regulation.
2. By 1 July 2012, Member States shall inform the Commission on the application and market effects of this Regulation in their respective territories. Member States shall, upon request from the Commission, submit that information earlier than that date.
3. By 1 July 2012, importers, exporters and operators of activities referred to in Article 2, as appropriate, shall send to the Commission and to the competent authorities the following data:
 - (a) volumes, prices, originating country and destination country as well as the intended use of metallic mercury entering the Community;
 - (b) volumes, originating country and destination country of metallic mercury considered as waste that is traded cross-border within the Community.

Article 6

1. 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.

2. 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 send 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;
 - (b) amount of mercury sent to individual temporary or permanent storage facilities as well as location and contact details of these facilities.

3. The companies concerned shall send the data referred to in paragraphs 1 and 2, as applicable, for the first time by ...^{*}, and thereafter each year by 31 May.

^{*} One year after the entry into force of this Regulation.

4. The Commission shall make the information in paragraph 3 publicly available in accordance with Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 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 bodies¹.

Article 7

Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are applied. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by ...* and shall notify it without delay of any subsequent amendment affecting them.

Article 8

1. 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;

¹ OJ L 264, 25.9.2006, p. 13.

* One year after the entry into force of this Regulation.

- (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 organise further exchanges of information when new relevant information has become available.

2. The Commission shall keep under review ongoing research activities on safe disposal options, including solidification of metallic mercury. The Commission shall submit a report to the European Parliament and the Council by 1 January 2010. On the basis of this report, the Commission shall, if appropriate, present a proposal for a revision of this Regulation as soon as possible and not later than 15 March 2013.
3. The Commission shall assess the application and market effects of this Regulation in the Community, taking into account the information referred to in paragraphs 1 and 2 and in Articles 5 and 6.

4. 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 referred to in paragraph 1 and of the assessment referred to in paragraph 3, as well as the report referred to in paragraph 2.
5. The Commission shall report to the European Parliament and the Council by 1 July 2010 on progress in multilateral activities and negotiations on mercury, assessing in particular the consistency of the timing and scope of the measures specified in this Regulation with international developments.

Article 9

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 this Regulation.

Article 10

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at

For the European Parliament

For the Council

The President

The President
