

# EUROPEAN PARLIAMENT

2004



2009

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*Session document*

FINAL  
**A6-0227/2007**

11.6.2007

## **\*\*\*I** **REPORT**

on the proposal for a regulation of the European Parliament and of the Council  
on the banning of exports and the safe storage of metallic mercury  
(COM(2006)0636 – C6-0363/2006 – 2006/0206(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Dimitrios Papadimoulis

### ***Symbols for procedures***

- \* Consultation procedure  
*majority of the votes cast*
- \*\*I Cooperation procedure (first reading)  
*majority of the votes cast*
- \*\*II Cooperation procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\* Assent procedure  
*majority of Parliament's component Members except in cases  
covered by Articles 105, 107, 161 and 300 of the EC Treaty and  
Article 7 of the EU Treaty*
- \*\*\*I Codecision procedure (first reading)  
*majority of the votes cast*
- \*\*\*II Codecision procedure (second reading)  
*majority of the votes cast, to approve the common position  
majority of Parliament's component Members, to reject or amend  
the common position*
- \*\*\*III Codecision procedure (third reading)  
*majority of the votes cast, to approve the joint text*

(The type of procedure depends on the legal basis proposed by the Commission.)

### ***Amendments to a legislative text***

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

## CONTENTS

	<b>Page</b>
DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION .....	5
EXPLANATORY STATEMENT .....	26
OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE .....	30
OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS .....	38
PROCEDURE.....	43



## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on the banning of exports and the safe storage of metallic mercury  
(COM(2006)0636 – C6-0363/2006 – 2006/0206(COD))**

**(Codecision procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to the European Parliament and the Council (COM(2006)0636)<sup>1</sup>,
  - having regard to Article 251(2) and Articles 133 and 175(1) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0363/2006),
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to Rules 51 and 35 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety and the opinion of the Committee on International Trade (A6-0227/2007),
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.

Text proposed by the Commission

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Amendments by Parliament

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### Amendment 1 Title

Proposal for a Regulation of the European Parliament and the Council on the banning of exports and the safe storage of metallic mercury

Proposal for a Regulation of the European Parliament and the Council on the banning of exports and the safe storage of metallic mercury, *cinnabar ore, calomel, mercury compounds and certain mercury-containing products*

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<sup>1</sup> OJ C ... / Not yet published in OJ.

*Justification*

*Consequent to the amendment to article 1.*

Amendment 2  
Citation 1

Having regard to the Treaty establishing the European Community, and in particular **Articles 133 and 175(1)** thereof,

Having regard to the Treaty establishing the European Community, and in particular **Article 175(1)** thereof,

*Justification*

*A double legal basis is not justified. According to the ECJ's case-law, a double legal basis should only be used if, exceptionally, it is demonstrated that the act simultaneously pursues several objectives without one being secondary and indirect in relation to the other. That is not the case here as the Commission itself states in the explanatory memorandum that the measure is motivated by the objectives of protecting human health and the environment (Art. 175 EC), and not by commercial policy considerations (Art. 133 EC).*

Amendment 3  
Recital 1

(1) Mercury releases are recognised as a global threat that warrants action at national, regional and global level.

(1) Mercury releases are recognised as a global threat that warrants action at **local**, national, regional and global level.

*Justification*

*Mercury releases and the threat they represent have an effect not just at the macro level but also, and in particular, at the micro level. Local authorities are a vital link in the waste management system, given that, in practice, it is they who bear the responsibility for ensuring safe storage of waste, including hazardous waste such as mercury (see Directive 75/442/EEC on waste and Directive 91/689/EEC on hazardous waste).*

Amendment 4  
Recital 2

(2) In accordance with the Communication from the Commission to the European Parliament and to the Council “Community Strategy Concerning Mercury”, it is necessary to reduce the risk of exposure to mercury for humans and the environment.

(2) In accordance with the Communication from the Commission to the European Parliament and to the Council “Community Strategy Concerning Mercury”, **and with the European Parliament's resolution of 14 March 2006<sup>1</sup> on that strategy**, it is necessary to reduce the risk of exposure to mercury for humans and the environment.

*Justification*

*The EP in its resolution called on the Commission to protect human health and the environment through legally binding measures which will eliminate releases of mercury and its compounds to the environment.*

Amendment 5  
Recital 3 a (new)

***(3a) Mercury is not yet subject to binding restrictions under multilateral environmental agreements, with the exception of the 1998 Protocol on Heavy Metals to the UN-ECE Convention on Long-Range Transboundary Air Pollution.***

*Justification*

*The phasing out of the export of metallic mercury and mercury compounds from the Community will not be sufficient to protect human health and the environment from the negative effects of the mercury released into the environment and, therefore, an international commitment is needed in addition, with a view to agreeing on a legally binding instrument.*

Amendment 6  
Recital 3 b (new)

***(3b) The European Parliament and the Council recognised the environmental and social problems arising from the closure of the mercury mines in the district of Almadén (Spain) and considered it advisable to adopt adequate compensation measures in order to allow the area affected to find viable solutions for the local environment, employment and economic activity. Furthermore, in its abovementioned resolution of 14 March 2006, the European Parliament took the view that the mines in Almadén would be a good site for the safe storage of metallic mercury.***

*Justification*

*To include a reference to Almadén, a long-established producer of mercury in the European Union, and the resolution adopted by Parliament on the overall assessment of the Community strategy concerning mercury.*

Amendment 7

Recital 4

(4) The export of metallic mercury from the Community should be banned in order to significantly reduce the global mercury supply.

(4) The export of metallic mercury, ***cinnabar ore, calomel and mercury compounds*** from the Community should be banned in order to significantly reduce the global mercury supply. ***Member States should have the right to impose broader and more stringent bans in accordance with Article 176 of the Treaty.***

*Justification*

*It is necessary to broaden the scope of the ban to also include mercury compounds in order to achieve substantial reductions in the global pool of mercury. Member States must have the right to impose more stringent bans.*

Amendment 8

Recital 4 a (new)

***(4a) For the same reason, the export of mercury-containing products already, or about to be, prohibited from being placed on the market in the European Union should also be banned. The Commission should draw up a consolidated list of the products covered which should be updated annually, on the basis of developments under Community law.***

*Justification*

*It is necessary to broaden the scope of the ban to also include mercury-containing products, which are subject to use and marketing restrictions within the EU in order to reach substantial reduction in the global pool of mercury. For transparency, these products should be gathered in a consolidated list which should be updated annually by the Commission.*

*Prohibited is more correct in the sense that something can be regulated without being prohibited.*



Amendment 9  
Recital 4 b (new)

***(4b) The import of metallic mercury, cinnabar ore, calomel and mercury compounds should be banned in order to ensure better protection for human health and the environment in the European Union.***

*Justification*

*The import of the mercury should be banned to minimise the quantity of mercury in Europe and to encourage the recovery from waste and raw products.*

Amendment 10  
Recital 5 a (new)

***(5a) Member States should periodically submit information to the Commission on the metallic mercury, cinnabar ore and mercury compounds entering or leaving or traded cross-border within their territory, in order to enable the effectiveness of the instrument to be assessed in due time. All such information should be readily available to the public.***

*Justification*

*Given that better data on mercury flows within Europe are needed immediately (also acknowledged by the 23<sup>rd</sup> UNEP Governing Council) the existing provisions for tracking and reporting on the movements of mercury, cinnabar ore and mercury compounds should be urgently strengthened, and further provisions set up as necessary.*

Amendment 11  
Recital 6

(6) In order to provide for possibilities of safe storage of mercury no longer used in the chlor-alkali industry, it is appropriate to derogate from point (a) of Article 5(3) of Council Directive 1999/31/EC of 26 April on the landfill of waste for certain types of landfill, and to declare the criteria of section 2.4 of the Annex to Council Decision 2003/33/EC of 19 December 2002

***(6) PARCOM (Convention for the Prevention of Marine Pollution from Land-Based Sources) Decision 90/3 agreed to the objective of phasing out mercury cell chlor-alkali plants completely by 2010.*** In order to provide for possibilities of safe ***temporary*** storage of mercury no longer used in the chlor-alkali industry, it is appropriate to derogate from point (a) of Article 5(3) of

establishing criteria and procedures for the acceptance of waste at landfills pursuant to Article 16 of and Annex II to Directive 1999/31/EC inapplicable for **non-underground** storage.

Council Directive 1999/31/EC of 26 April on the landfill of waste for certain types of landfill, and to declare the criteria of 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/EC inapplicable for **above-ground, retrievable** storage.

#### *Justification*

*Mercury cells in the chlor-alkali industry represent by far the biggest stocks of mercury in the EU. It is therefore important to put the phase-out of mercury cells in the chlor-alkali industry into the context of PARCOM Decision 90/3.*

*Metallic mercury is liquid. It should be clarified that storage of liquid mercury can only be accepted on a temporary basis. Its final disposal should only occur in solidified form. Commercial processes to solidify metallic mercury are being developed and are expected to be available in a few years time.*

#### Amendment 12

##### Recital 7

(7) In order to ensure storage that is safe for human health and the environment, the safety assessment required under Decision 2003/33/EC for underground storage should **be complemented by specific requirements and should also** be made applicable to **non-underground** storage.

(7) In order to ensure **temporary** storage that is safe for human health and the environment, the safety assessment required under Decision 2003/33/EC for underground storage should be made applicable to **above-ground, retrievable** storage.

#### *Justification*

*Amendment in line with the modification of Article 3 by the same author. Storage of liquid mercury in mines creates the risk to become de facto final disposal. This would not be acceptable and against the safety provisions of the landfill directive. Storage should only be temporary and only occur above-ground in a retrievable manner.*

#### Amendment 13

##### Recital 7 a (new)

***(7a) 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 the 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 relevant data to the Commission and the competent authorities of the Member States concerned. The Commission should make this information publicly available.***

*Justification*

*The chlor-alkali industry committed voluntarily to provide data on the decommissioning of mercury cells to the European Commission. However, this data is crucial for ensuring enforcement of the regulation and should therefore be included in this regulation. The same should apply to the other industry sectors that gain mercury. The data should be provided to the European Commission and to the competent authorities of the Member States concerned, and should be publicly available in accordance with the regulation on access to environmental matters for Community institutions.*

Amendment 14  
Recital 8

(8) It is appropriate to organise an exchange of information in order to assess the potential need for supplementary measures related to export **and** storage of mercury, without prejudice to the competition rules of the Treaty, in particular Article 81.

(8) It is appropriate to organise an exchange of information **with all stakeholders** in order to assess the potential need for supplementary measures related to **import, export, temporary storage and final disposal** of mercury, **its compounds and mercury-containing products**, without prejudice to the competition rules of the Treaty, in particular Article 81.

*Justification*

*All stakeholders should participate in the exchange of information with regard to the potential need for supplementary measures. This should also include import and final disposal of mercury as well as provisions about mercury compounds and products containing mercury.*

Amendment 15  
Recital 9

(9) Member States should submit information on permits issued for storage

(9) Member States should submit information on permits issued for **temporary**

facilities as well as on the application and the market effects of the instrument, in order to allow for an assessment of the instrument in due time.

storage facilities as well as on the application and the market effects of the instrument, in order to allow for an assessment of the instrument in due time.

*Justification*

*It should be specified that storage of mercury may only be temporary.*

Amendment 16  
Recital 10 a (new)

***(10a) The Commission and the Member States should 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 on the safe storage of metallic mercury.***

*Justification*

*Public availability of information has been demonstrated to be extremely important to ensure a high level of protection of human health and the environment.*

Amendment 17  
Recital 11 a (new)

***(11a) Member States should lay down rules on penalties applicable to infringements of the provisions of this Regulation and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.***

*Justification*

*Since non-compliance with this Regulation can result in damage to human health and the environment, a workable and transparent procedure should be established on sanctions for non-compliance.*

Amendment 18  
Recital 11 b (new)

***(11b) Technical assistance should be provided directly by the Commission and***

*the Member States to developing countries and countries with economies in transition, or indirectly via support for projects by non-governmental organisations (NGOs), 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.*

*Justification*

*The export ban on mercury might have a significant negative impact in developing countries and economies in transition in the short term, where mercury is, for example, still used in artisan gold mining. Assistance is therefore needed from the EU in order to facilitate the transition to mercury-free technologies.*

Amendment 19

Recital 12

(12) The Regulation ***contains a trade-related element as well as elements*** motivated by *environmental policy considerations. Article 1 is trade-related and therefore based on Article 133 of the Treaty, whereas the other Articles are based on Article 175(1).*

(12) The Regulation ***is*** motivated by ***the need to protect human health and the environment.***

*Justification*

*A double legal basis is not justified. Firstly, the Commission itself states that the measure is motivated by the objectives of protecting human health and the environment (Art. 175), and not by commercial policy considerations (Art. 133). Secondly, the reference to the recent judgement of the ECJ concerning the Rotterdam Convention to defend the double legal basis is inappropriate. The Rotterdam Convention establishes a trading regime - this regulation establishes a trading ban, which is a very different matter.*

Amendment 20

Article 1

The export of metallic mercury (Hg, CAS RN 7439-97-6) from the Community shall be prohibited from ***1 July 2011.***

The export of metallic mercury (Hg, CAS RN 7439-97-6), ***cinnabar ore and mercury compounds with a mercury concentration above 5% weight by weight (w/w)*** from the Community shall be prohibited from ***1 December 2010.***

*Justification*

*Mercury and its compounds are highly toxic to humans and animals. Mercury compounds with a mercury concentration above 5% as well as cinnabar ore should also be included in the ban to avoid indirect exports of mercury.*

*The biggest stocks of mercury are in the chlor-alkali industry. Pursuant to PARCOM Decision 90/3, mercury cells in that sector are to be phased by 2010. To wait with the export ban until 2011 is almost cynical, as it would allow all mercury decommissioned before that date to be exported, all too often with devastating consequences in third countries (e.g. open gold mining).*

*European Parliament resolution on the Community strategy concerning mercury (2005/2050(INI)) adopted in March 2006 requested export ban from 2010.*

Amendment 21  
Article 1 a (new)

***The export of mercury-containing products banned from sale or distribution within the European Union shall be prohibited from 1 January 2010.***

Amendment 22  
Article 1 a (new)

***Article 1a***

***The import into the Community of metallic mercury (Hg, CAS RN 7439-97-6), cinnabar ore, and mercury compounds with a mercury concentration above 5% weight by weight (w/w) shall be prohibited from 1 July 2010.***

***Member States should meet their own mercury requirements from recovery from wastes and raw products.***

*Justification*

*The export ban should be complemented by a similar import ban applicable at the same time.*

*Mercury import ban will ensure that EU mercury demands will be supplied from mercury recovery from wastes and raw products.*

Amendment 23  
Article 2

From the date set out in Article 1, 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 stored, ***in the quality and concentration*** in a way that is safe for human health and the environment.

From the date set out in Article 1, ***Member States shall 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 this Regulation.***

#### *Justification*

*The technology for safe disposal of liquid mercury is not commercially available yet. We would therefore consider that storage of the liquid mercury should only be temporary for the moment. As soon as the technology is available, the temporarily stored metallic mercury will have to be eventually disposed safely within the Community.*

In many cases, both storage and transport with appropriate safety precautions are an integral part of operations in the chlor-alkali, mining and smelting industries, one of whose objectives is to minimise the adverse impact of mercury on the environment and human health.

#### Amendment 24 Article 2, paragraph 1 a (new)

***Prior to any other alternative, consideration shall 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.***

#### *Justification*

*Mercury must be stored safely in compliance with the rules of safe long-term environmental management. Parliament itself has already pointed out, in its resolution on the Community strategy concerning mercury, that 'consideration should 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'.*

## Amendment 25

### Article 3, paragraph 1, subparagraph 1

1. By derogation *to* point (a) of Article 5(3) of Directive 1999/31/EC metallic mercury that is considered as waste *may* be stored in appropriate containment in *either of the following*:

(a) an underground salt mine adapted for *waste disposal*;

(b) *a* facility exclusively dedicated to and equipped for the temporary storage of metallic mercury prior to its final disposal.

1. By *way of* derogation *from* point (a) of Article 5(3) of Directive 1999/31/EC metallic mercury that is considered as waste *shall* be stored *temporarily* in appropriate containment in:

(a) an underground salt mine adapted for *temporary storage of metallic mercury prior to its final disposal pursuant to Article 5*; or

(b) *an above-ground* facility exclusively dedicated to and equipped for the temporary storage of metallic mercury prior to its final disposal.

### *Justification*

*It is unclear from the proposal whether the Commission seeks to allow for storage of metallic mercury in underground salt mines or for its final disposal therein. All too often, storage in mines becomes de facto permanent. Out of sight, out of mind! However, final disposal of liquid mercury in mines would not be acceptable and is in clear contradiction to Decision 2003/33/EC, which specifies that for acceptance of waste in underground storage "containers and cavity lining should not be taken into account when assessing the long-term risk of waste deposits because of their limited lifetime".*

The fact that mercury is liquid and the question of whether salt mines could keep it intact, without having the mercury-storage drums ultimately leaking and releasing vapours, remains a concern. From an environmental point of view, disposal is the preferred option. However, secure storage might be needed for economic and technical reasons for a limited period in order to find a long-term solution.

## Amendment 26

### Article 3, paragraph 2

2. By derogation *to* point (a) of Article 11(1) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council the competent authorities for destination and dispatch may not raise objections to shipments of metallic mercury that is considered as waste based on grounds that the planned shipment *or disposal* would not be in accordance with measures taken to implement the principles of proximity, priority for recovery and self-sufficiency.

2. By *way of* derogation *from* point (a) of Article 11(1) of Regulation (EC) No 1013/2006 of the European Parliament and of the Council *of 14 June 2006 on shipments of waste*, the competent authorities for destination and dispatch may not raise objections to shipments of metallic mercury that is considered as waste *and that is destined for temporary storage* based on grounds that the planned shipment would not be in accordance with measures taken to



implement the principles of proximity, priority for recovery and self-sufficiency.

#### *Justification*

*Metallic mercury should only be finally disposed of in solidified form. Processes for such solidification will only be available in a few years time. Until such processes are available, shipments of metallic mercury may only occur for purposes of temporary storage.*

#### Amendment 27

##### Article 4

1. The safety assessment to be carried out in accordance with Decision 2003/33/EC for storage in an underground salt mine adapted for waste storage shall cover in particular the additional risks arising from the nature and long-term behaviour of the metallic mercury and its containment.

2. A safety assessment ensuring a level of environmental protection equivalent to the level ensured by Decision 2003/33/EC shall be carried out and submitted to the competent authority for the temporary storage in *a* facility exclusively dedicated to and equipped for the storage of metallic mercury.

3. The permit referred to in Articles 8 and 9 of Directive 1999/31/EC for the underground salt mine or the facility exclusively dedicated to and equipped for the temporary storage of metallic mercury shall include requirements for regular visual inspections of the containers and the installation of appropriate vapour detection equipment to detect any leak.

1. The safety assessment to be carried out in accordance with Decision 2003/33/EC for storage in an underground salt mine adapted for **temporary** waste storage shall cover in particular the additional risks arising from the nature and long-term behaviour of the metallic mercury and its containment.

2. A safety assessment ensuring a level of **health and** environmental protection equivalent to the level ensured by Decision 2003/33/EC shall be carried out and submitted to the competent authority for the temporary storage in **an above-ground** facility exclusively dedicated to and equipped for the storage of metallic mercury.

3. The permit referred to in Articles 8 and 9 of Directive 1999/31/EC for the underground salt mine or the **above-ground** facility exclusively dedicated to and equipped for the temporary storage of metallic mercury shall include requirements for regular visual inspections of the containers and the installation of appropriate vapour detection equipment to detect any leak. **Mercury shall be retrievable for safe final disposal, pursuant to Article 5.**

#### *Justification*

*The fact that mercury is liquid and the question of whether salt mines could keep it intact, without having the mercury-storage drums ultimately leaking and releasing vapours, remains a concern. From an environmental point of view, disposal is the preferred option. However,*

*secure storage might be needed for economic and technical reasons for a limited period in order to find a long-term solution.*

Health protection policy is of equal importance to environmental policy in this Regulation. The safety assessment should therefore also cover mercury's impact on health.

Amendment 28  
Article 4 a (new)

**Article 4a**

***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 by ....\*.***

***\* Six months before the entry into force of the export ban.***

*Justification*

*Storage should be controlled in a very strict way. Taking into consideration the particular toxic nature and long term behaviour of the metallic mercury, a further safety assessment for storage is needed in due time before the export ban comes into force.*

Amendment 29  
Article 4 b (new)

**Article 4b**

***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, but not exclusively, 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 pursuant to Article 5, Member States shall assume the administrative and financial responsibility***

*of disposal.*

*Justification*

*Since mercury is particularly hazardous, the security question during the temporary storage remains. It is, therefore, essential, according to the polluter pays principle, that liability lie with the owners of the storage facilities. Member States should also take their responsibilities and provide for financial resources aimed at a safe final disposal.*

Amendment 30  
Article 4 c (new)

*Article 4c*

***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:***

- *best estimate of total amount of mercury still in use,*
- *amount of mercury recovered upon closure or reconversion of chlor-alkali plants,*
- *amount sent to individual temporary storage facilities,*
- *location and contact details for all storage facilities,*
- *transfers to other chlor-alkali plants in the European Union for the operation of continuing cells,*
- *amount temporarily stored under the responsibility of the original owner for the operation of continuing cells.*

***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 provide the following data related to mercury gained in a given year to the Commission and the competent authorities of the Member States concerned:***

- *amount of mercury gained,*
- *amount sent to individual temporary storage facilities,*
- *location and contact details for all storage facilities.*

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

**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 bodies<sup>1</sup>.**

**\* The year after entry into force of this Regulation.**

**<sup>1</sup> OJ L 264, 25.9.2006, p. 13.**

#### *Justification*

*The chlor-alkali industry committed voluntarily to provide data on the decommissioning of mercury cells to the European Commission. However, this data is crucial for ensuring enforcement of the regulation and should therefore be included in this regulation. The same should apply to the other industry sectors that gain mercury. The data should be provided to the European Commission and to the competent authorities of the Member States concerned, and should be publicly available in accordance with the regulation on access to in environmental matters for Community institutions.*

#### Amendment 31 Article 5

The Commission shall organise an exchange of information between Member States and the **industries concerned**.

That exchange **of information** shall **in particular** examine the **potential** need for extending the export ban to mercury compounds **and products containing mercury**, for extending the storage obligation to metallic mercury from other sources and for time limits concerning storage in **a** facility specifically dedicated to and equipped for the temporary storage of metallic mercury.

The Commission shall organise an **initial** exchange of information between Member States and the **relevant stakeholders by 30 June 2010**.

That exchange shall **be based on the information collected by then and shall also** examine the need for extending the export ban to mercury compounds **with a mercury concentration below 5% weight by weight (w/w)**, for extending the storage obligation to metallic mercury from other sources and for time limits concerning storage in **an underground salt mine or an above-ground** facility specifically dedicated to and equipped for the

temporary storage of metallic mercury.

***The exchange of information shall 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 sub-produced by European industry in accordance with Article 2.***

#### *Justification*

*Extensive stakeholder consultation was on-going throughout the preparation of the Community Strategy on mercury and the present Regulation. Interested entities, including Member States, industry and environmental and health NGOs, should take part in the exchange of information.*

*It should be clarified that the exchange of information is a continuous process. It should look primarily at the issues not yet addressed by this regulation.*

Complies with the approach approved by Parliament in its resolution of 14 March 2006 on the Community strategy concerning mercury.

#### Amendment 32 Article 6, paragraph 2

2. Member States shall, ***by 30 November 2014 at the latest***, inform the Commission on the application and market effects of this Regulation in their respective territory. ***Member States shall, upon request from the Commission, submit that information earlier than the date set out in the first subparagraph.***

2. 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 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 information shall be provided in a format which shall be established by the Commission by ... \*.***

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

*Justification*

*Introducing the export ban will also require an efficient monitoring system to ensure that mercury is not illegally shipped to the global markets. A trade tracking system should be in place, to record all imports and exports of metallic mercury and mercury compounds between the Member States and between the EU and third countries where the trade is not restricted.*

Amendment 33  
Article 6, paragraph 3

3. The information referred to in paragraph 2 shall at least contain data on the following:

(a) volumes, prices, originating country and destination country as well as the intended use of metallic mercury entering or leaving the Community;

(b) volumes, prices, originating country and destination country as well as the intended use of metallic mercury traded cross-border within the Community.

3. The information referred to in paragraph 2 shall at least contain data on the following:

(a) volumes, prices, originating country and destination country as well as the intended use of metallic mercury, ***cinnabar ore, calomel and mercury compounds*** entering or leaving the Community;

(b) volumes, prices, originating country and destination country as well as the intended use of metallic mercury, ***cinnabar ore, calomel and mercury compounds*** traded cross-border within the Community.

*Justification*

*Consequent to the amendment to article 1.*

Amendment 34  
Article 6 a (new)

***Article 6a***

***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 implemented. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions to the Commission by ...\* at the latest and shall notify it without delay of any subsequent amendment affecting them.***

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

*Justification*

*This article is a standard provision for penalties in the event of infringements.*

Amendment 35  
Article 6 b (new)

**Article 6b**

***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.***

*Justification*

*Increased public access to information about the export ban of metallic mercury and mercury compounds and the dissemination of such information contribute to a more effective protection of human health and to a better environment.*

Amendment 36  
Article 7

1. The Commission shall assess the application and market effects of this Regulation in the Community, taking into account the information referred to in **Article 6**.
2. The Commission shall submit a report to the European Parliament and the Council by 30 June **2015** at the latest.

1. The Commission shall assess the application and market effects of this Regulation in the Community, taking into account the information referred to in **Articles 5 and 6**.
2. The Commission shall submit a report to the European Parliament and the Council by 30 June **2012** at the latest. ***The report shall, as appropriate, be accompanied by proposals for revision of this Regulation.***  
***2a. Six months before the ban on exports comes into force in accordance with Article 1, the Commission shall evaluate the effectiveness and impact of the compensation measures undertaken in order to allow the area affected by the closure of mercury mines to achieve viable economic and social alternatives.***

*Justification*

*After a certain period of implementation and according to the change of the export ban date, the effectiveness of the proposed legal measures will need to be assessed with a view to establishing an overview report with revision proposals.*

Amendment 37

Article 8

*At least one year before the date set out in Article 1, the Commission shall report to the European Parliament and the Council 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.*

The Commission shall report to the European Parliament and the Council **by 31 December 2009 at the latest** on progress in multilateral activities and negotiations on mercury, assessing in particular the consistency of the measures specified in this Regulation with international developments.

Amendment 38

Article 8 a (new), paragraph 1

*Article 8a*

***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.***

*Justification*

*The export ban on mercury might have significant negative impact in developing countries and in economies in transition in the short term, where mercury is for example still used in artisan gold mining, and assistance is needed from the EU in order to facilitate the transition to mercury free technologies. The wording of this amendment is borrowed from the new proposal for the regulation on export and import of dangerous chemicals.*

Amendment 39

Article 8 a (new), paragraph 2



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

*Justification*

*Assistance could be considered to be channelled also via NGOs which have significant practical experience of this kind of work.*

## EXPLANATORY STATEMENT

### Introduction

Mercury and its compounds are highly toxic to humans, especially to children's developing nervous system. They are also harmful to ecosystems and wildlife. Initially seen as an acute but local problem, mercury pollution is now also understood to be global, diffuse and chronic. High doses can be fatal to humans, but even relatively low doses can have serious adverse neuro-developmental impacts, and have recently been linked with possible harmful effects on the cardiovascular, immune and reproductive systems. Mercury also retards microbiological activity in soil, and is a priority hazardous substance under the Water Framework Directive.

In the environment, mercury can change into methylmercury, which has the capacity to bioaccumulate and to concentrate in food chains, especially in the aquatic food chain. Methylmercury readily passes both the placental barrier and the blood-brain barrier.

### Supply in the European Union

Mercury occurs naturally in the environment and exists in different forms. In pure form, it is known as "elemental" or "metallic" mercury (Hg(0)). It is rarely found in nature as a pure, liquid metal, but rather within compounds and inorganic salts.

The main sources of mercury supply in the EU are:

- surpluses from the chlor-alkali industry when converting to a mercury-free process or when a plant is closed (plant de-commissioning);
- by-product mercury from non-ferrous mining and smelting activities (zinc, copper, lead, gold, silver and other ores); if not recovered as metallic mercury, the by-product from this process may be calomel (mercurous chloride), depending on the purification process;
- by-product mercury from natural gas cleaning;
- recycled mercury from mercury containing products (fluorescent lamps, batteries, dental amalgam, measuring and control equipment, switches) and from manufacturing and process wastes;
- mercury inventories accumulated over previous years by brokers and traders such as MAYASA.

The biggest mercury mine in the world is situated in Almadén, Spain. Mercury mining in Almadén has stopped since 2003, however the owner company, MAYASA, is collecting and trading internationally (mainly to developing countries) the mercury from Western Europe's decommissioned chlor-alkali plants, as well as mercury from other sources.

### The Commission proposal for EU mercury export ban and storage of surplus mercury

Considering the danger posed by mercury and because alternative mercury-free processes exist, in 1990 the Oslo Paris Commission (OSPAR) recommended that all mercury cell chlor-alkali plants be converted to mercury-free technology by 2010 (PARCOM Decision 90/3). The European Parliament's Resolution on the Community Strategy of Mercury (March 2006), called on the European Commission to take action to implement the OSPAR Decision 90/3. Apart from ongoing mercury emissions from mercury-cell chlor-alkali plants (MCCAPs), when these plants convert to mercury-free technologies, the vast quantities of mercury in their

cells need to be managed in an environmentally appropriate manner. To prevent this surplus mercury from flooding the world mercury commodity market, a proposal for a Regulation banning exports of metallic mercury by July 1, 2011, was adopted in October 2006. The proposal includes parallel provisions on safe storage of the excess mercury which will mainly be coming from decommissioned mercury-cell chlor-alkali plants, to prevent its re-sale. Currently there are around 12000 tonnes of mercury sitting in mercury cells in Europe. To that end Euro Chlor (the EU chlor-alkali industry federation) has been asked by the European Commission and has agreed to develop a Voluntary Agreement for the storage of surplus chlor-alkali mercury, acknowledging that storage will be needed. A storage obligation is proposed for metallic mercury no longer used in the chlor-alkali industry, by-product mercury from production of non-ferrous metals and by-product mercury from cleaning gas. The storage obligation deliberately does not cover recycled mercury from mercury-containing products.

### **Rapporteur's recommendations**

The Rapporteur welcomes the Commission's proposal. Nevertheless he considers that some modifications have to be made with the aim to better protect human health and the environment. In this respect, the Rapporteur proposes a number of amendments that mainly refer to the following items:

#### **Date of export ban**

As the EU exports more mercury overall than any other region of the world, an early export ban, coupled with other international actions, will significantly reduce the disproportionate impacts of mercury exposure in the developing world caused by abundant mercury supplies. Until the export ban is in place, EU mercury will still be entering the market, increasing the risk for human health and the environment. Thus, the proposed ban should be implemented as soon as possible, preferably by 2009.

Earlier Commission drafts as well as the Luxembourg Presidency had proposed 2008 as the export ban date.

The committee did not completely follow the rapporteur on this point and brought forward the date of the export ban to 1 December 2010.

#### **Scope of the mercury export ban**

To keep the Regulation fair and simple, mercury compounds should be included in the export ban. Mercury compounds (except mercury sulphide) are classified as toxic from 0, 5% and for some specific substances even less.

The Rapporteur supports the inclusion of mercury compounds in the export ban of mercury. There is justified concern that mercury may be exported as mercury compound produced for example, during non-ferrous mining and smelting operations (as calomel  $\text{Hg}_2\text{Cl}_2$ ) to other countries and converted to elemental mercury for further use there. In the rapporteur's view, a general export ban including mercury compounds will contribute to the reduction of emission and the amount of mercury in circulation. In addition, an export ban on mercury compounds can prevent compounds rich in mercury content to be utilised as raw-material for processing of metallic mercury. This can prevent a possible loophole in the Regulation.

In addition, an export ban on cinnabar ore can prevent minerals and compounds rich in mercury content to be utilised as raw material for processing of metallic mercury.

Mercury-containing products, which are subject to EU use and marketing restrictions, should

also be included in the ban. The EU should avoid double standards. Mercury-containing products prohibited in the EU should not be exported to countries where they may not yet be regulated.

The European Parliament (March 2006) called for the export ban to include mercury compounds and products containing mercury which are or will soon be subject to EU use and marketing restrictions.

### **Mercury imports**

The Rapporteur is of the opinion that the EC should consider an EU mercury import ban to ensure EU mercury supplies are consistent with EU demand, storage obligations, and policies encouraging mercury recovery from wastes and products. It doesn't make any sense on the one hand to store mercury originating in the EU and at the same time to import mercury for the justified use in the EU.

### **Trade tracking system**

A system should be set up to regularly track metallic mercury and mercury compound imports and exports to and from the EU and internal trade. The European Parliament (March 2006) has called for a mercury trade tracking system to be in place before the export ban.

The 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 should regularly provide information to the Commission, which should make this information public.

### **Safe and sustainable storage solution for surplus mercury**

Surplus mercury will need to be stored/ disposed of. All surplus mercury should eventually be disposed of in a safe and environmentally sound way.

Disposal of metallic mercury in salt mines raises serious concerns with respect to the environmental safety over the longer term. The fact that mercury is liquid and the question of whether salt mines could keep it intact, without having the mercury - storage drums ultimately leaking and releasing vapours, remains a concern.

Also, mercury extracted from cinnabar ore should be stored as well, because allowing the use of mercury extracted from cinnabar ore would mean adding new mercury to the market, contrary to this Regulation's objective.

The Rapporteur is of the opinion that until safe disposal techniques are developed and fully evaluated, temporary storage of metallic mercury should be pursued as a prelude to permanent disposal. The volume of mercury in question is quite small in relative terms. Due to its high density, the approximate 12000 tonnes of surplus mercury from the chlor-alkali industry will have a volume of around 1000 cubic metres.

A framework of minimum conditions for storage should be established ensuring continuous monitoring, minimum safety standards, regular and transparent reporting, advance planning and projections, assurance of delivery, and penalties for failure.

According to the polluter pays principle, the responsibility during the temporary storage should remain with the owner of the storage facility.

Member States shall assume the administrative and financial responsibility of the safe final disposal.

The European Parliament (March 2006) called for legally binding measures to ensure that all mercury from the chlor-alkali industry is not put back into the market and is safely stored, in

secure sites, continuously monitored and located where active intervention can take place immediately if necessary. Furthermore it asked for minimum safety standards, regular and transparent reporting, advance planning and projections, penalties and sanctions and underlined the importance of applying the polluter-pays principle as far as storage is concerned, and that the industry sectors responsible for the production of mercury should contribute to the financing of the safe storage of surplus mercury.

26.3.2007

## **OPINION OF THE COMMITTEE ON INTERNATIONAL TRADE**

for the Committee on the Environment, Public Health and Food Safety

on the proposal for a regulation of the European Parliament and of the Council on the banning of exports and the safe storage of metallic mercury  
(COM(2006)0636 – C6-0363/2006 – 2006/0206(COD))

Draftsperson: Jens Holm

### **SHORT JUSTIFICATION**

The heavy metal mercury is a very dangerous pollutant. As soon as it enters our environment it is spread very easily and can also be transformed into an even more dangerous compound, methyl mercury. This compound accumulates in the food chain, and mostly ends up in fish that people consume. Once it has been released, mercury constitutes a significant threat to human health, animals and the environment for the foreseeable future. There is increasing evidence that the cost to society for public health and environmental damage is probably much higher than had previously been thought.

Mercury and its compounds affect the central nervous system, kidneys, and liver and can disturb auto-immune processes, cause tremors, impaired vision and hearing, paralysis, insomnia, and emotional instability. Mercury compounds cross the placental barrier and can cause developmental deficits during foetal development, and attention deficit and developmental delays during childhood. Even low doses of mercury containing compounds can have serious adverse neurodevelopmental impacts, and have recently been linked with possible harmful effects on the cardiovascular, immune and reproductive systems.

Mercury is today used in industrial processes such as the chlor-alkali industry and artisanal, small-scale gold mining. The metal can also be found in a considerable number of consumer products on sale all over the world. It is in products like fluorescent lamps, electrical components, measuring equipment and dental amalgams. In the EU, the metal is, however, primarily released to nature through the combustion of fossil fuels, especially coal. Mercury is a very mobile metal and can easily travel long distances. The dissemination of mercury constitutes a global problem and there is an urgent need for significant measures.

Thus the strategy concerning mercury which was presented by the Commission at the beginning of 2005 was very welcome. Action 5 in this strategy says "phase out the export of mercury from the Community". This is a particularly important element since the EU is the world's largest mercury exporter. Around 1000 tonnes of raw mercury is every year exported

from the EU out of a global total of 3600 tonnes. Most of this mercury ends up in the developing countries, where management and control are less stringent. This poses significant risks of contamination of workers and local communities.

The proposal for a regulation on the banning of exports and the safe storage of metallic mercury was sent to the European Parliament and the Council on 26 October 2006. This proposal represents an important beginning and, at the same time, sends an important signal to the rest of the world that the EU is ready to accept its international responsibility for many of the intentional releases and uses of mercury.

Nevertheless there are certain weaknesses in the proposal which need to be remedied. The suggested modifications aim at making the regulation a genuine tool for reducing the global pool of mercury.

In this respect, the draftsman proposes a number of amendments that mostly refer to the following points:

- A broadening of the scope of the export ban to include mercury compounds.
- A broadening of the scope of the export ban to include mercury-containing products, which are subject to use and marketing restrictions within the EU.
- The export ban for metallic mercury, mercury compounds and mercury-containing products must be implemented as soon as possible and by 1 January 2008 at the latest.
- A ban on imports of metallic mercury and mercury compounds should be introduced.
- The establishment of a tracking system for the trade of mercury within the Community and also trade with third countries. This would improve the transparency and increase the flow of information for the relevant stakeholders.
- Affected developing countries and countries with economies in transition should be provided with relevant assistance in order to speed up the switch to mercury-free technology and the ultimate elimination of releases and uses of mercury.

## AMENDMENTS

The Committee on International Trade calls on the Committee on the Environment, Public Health and Food Safety, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission<sup>1</sup>

Amendments by Parliament

### Amendment 1 Recital 4

(4) The export of metallic mercury from the Community should be banned in order to significantly reduce the global mercury

(4) The export of metallic mercury *and mercury compounds* from the Community should be banned in order to significantly reduce the global mercury supply. *Member*

<sup>1</sup> Not yet published in OJ.

supply.

***States should have the right to impose broader and more stringent bans in accordance with article 176 of the EC Treaty.***

*Justification*

*It is necessary to broaden the scope of the ban to also include mercury compounds in order to achieve substantial reductions in the global pool of mercury. Member States must have the right to impose more stringent bans.*

Amendment 2  
Recital 4 a (new)

***(4a) The export of products containing mercury, which are subject to use and distribution restrictions within the EU, should also be banned. The Commission should draw up a consolidated list of the products covered which should be updated annually, on the basis of developments under Community law.***

*Justification*

*It is necessary to broaden the scope of the ban to also include mercury-containing products, which are subject to use and marketing restrictions within the EU in order to reach substantial reduction in the global pool of mercury. For transparency, these products should be gathered in a consolidated list which should be updated annually by the Commission.*

Amendment 3  
Recital 7 a (new)

***(7a) The import of metallic mercury and mercury compounds should be banned in order to improve environmental protection and public health in the EU.***

*Justification*

*To protect the environment and public health in the EU better, and to manage the supply and demand of mercury more effectively, a ban on imports of metallic mercury and mercury compounds should be introduced.*

Amendment 4



Recital 8 a (new)

***(8a) Member States should submit information on the mercury entering, leaving or being traded across borders within the Community, in order to allow for an assessment of the effectiveness of the instrument in due time.***

*Justification*

*Better data on trade flows is needed immediately as shown in the UNEP report on supply, trade and demand information on mercury of November 2006. In this way relevant information will be made available also for comparative purposes at the review process, to demonstrate changes in the markets etc.*

Amendment 5

Recital 11 a (new)

***(11a) Technical assistance should be provided directly by the Commission and the Member States to developing countries and countries with economies in transition, or indirectly via support for projects by non-governmental organisations (NGOs), 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.***

*Justification*

*The export ban on mercury might have a significant negative impact in developing countries and economies in transition in the short term, where mercury is, for example, still used in artisan gold mining. Assistance is therefore needed from the EU in order to facilitate the transition to mercury-free technologies.*

Amendment 6

Article 5, paragraph 1

The Commission shall organise an exchange of information between Member States and the industries concerned.

The Commission shall organise an ***initial*** exchange of information between Member States, ***NGOs*** and the industries concerned ***by 1 July 2010 at the latest.***

*Justification*

*The exchange of information should also include NGOs. A specific date needs to be agreed for the stakeholder meeting to review new data and experiences, as reported by the Member States on the basis of Article 6 as amended.*

Amendment 7  
Article 5, paragraph 2

That exchange *of information* shall *in particular* examine the potential need for extending the *export ban to mercury compounds and products containing mercury, for extending the* storage obligation to metallic mercury from other sources and for time limits concerning storage in a facility specifically dedicated to and equipped for the temporary storage of metallic mercury.

That exchange shall *be based on the information collected so far and shall also* examine the potential need for extending the storage obligation to metallic mercury from other sources and for time limits concerning storage in a facility specifically dedicated to and equipped for the temporary storage of metallic mercury.

*Justification*

*For consistency with previous amended articles.*

Amendment 8  
Article 6, paragraph 2

2. Member States shall, *by 30 November 2014 at the latest*, inform the Commission on the application and market effects of this Regulation in their respective territory. *Member States shall, upon request from the Commission, submit that information earlier than the date set out in the first subparagraph.*

2. Member States shall *draw up a register of buyers, sellers and traders of mercury 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, no later than 6 months after the end of the period covered. The information shall be provided in a format established by the Commission. The first batch of information shall cover the years 2007-2008 and shall be submitted to the Commission by 30 June 2009 at the latest. The Commission shall publish the information in a concise report within one year of its submission by the Member States, and no later than 30 June 2010.*

### *Justification*

*Better data on trade flows is needed immediately as shown in the UNEP report on supply, trade and demand information on mercury of November 2006. In this way relevant information will be made available also for comparative purposes at the review process, to demonstrate changes in the markets etc.*

#### Amendment 9 Article 7, paragraph 1

1. The Commission shall assess the application and market effects of this Regulation in the Community, taking into account the information referred to in *Article 6*.

1. The Commission shall assess the application and market effects of this Regulation in the Community, taking into account the information referred to in *Articles 5 and 6*.

#### Amendment 10 Article 7, paragraph 2

2. The Commission shall submit a report to the European Parliament and the Council by **30 June 2015** at the latest.

2. The Commission shall submit a report to the European Parliament and the Council by **30 June 2012** at the latest. ***The report shall, if necessary, be accompanied by proposals for revision of the relevant provisions of this Regulation.***

### *Justification*

*To ensure a follow-up of the information collected through the processes stated in articles 5 and 6, a report should be submitted by the Commission with proposals for revision if necessary.*

#### Amendment 11 Article 8

8. ***At least one year before the date set out in Article 1, the*** Commission shall report to the European Parliament and the Council 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.

8. ***The*** Commission shall report to the European Parliament and the Council ***by 31 December 2009 at the latest*** on progress in multilateral activities and negotiations on mercury, assessing in particular the consistency of the measures specified in this Regulation with international developments.

Amendment 12  
Article 8 a (new), paragraph 1

**Article 8a**

***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.***

*Justification*

*The export ban on mercury might have significant negative impact in developing countries and in economies in transition in the short term, where mercury is for example still used in artisan gold mining, and assistance is needed from the EU in order to facilitate the transition to mercury free technologies. The wording of this amendment is borrowed from the new proposal for the regulation on export and import of dangerous chemicals.*

Amendment 13  
Article 8 a (new), paragraph 2

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

*Justification*

*Assistance could be considered to be channelled also via NGOs which have significant practical experience of this kind of work.*

## PROCEDURE

<b>Title</b>	The banning of exports and the safe storage of metallic mercury
<b>References</b>	COM(2006)0636 - C6-0363/2006 - 2006/0206(COD)
<b>Committee responsible</b>	ENVI
<b>Opinion by</b> Date announced in plenary	INTA 14.11.2006
<b>Drafts(wo)man</b> Date appointed	Jens Holm 22.11.2006
<b>Discussed in committee</b>	27.2.2007
<b>Date adopted</b>	21.3.2007
<b>Result of final vote</b>	+: 16 -: 11 0: 0
<b>Members present for the final vote</b>	Kader Arif, Graham Booth, Carlos Carnero González, Béla Glattfelder, Eduard Raul Hellvig, Jacky Henin, Syed Kamall, Ģirts Valdis Kristovskis, Caroline Lucas, Marusya Ivanova Lyubcheva, Erika Mann, David Martin, Georgios Papastamkos, Godelieve Quisthoudt-Rowohl, Tokia Saïfí, Peter Šťastný, Daniel Varela Suanzes-Carpegna, Zbigniew Zaleski
<b>Substitute(s) present for the final vote</b>	Jean-Pierre Audy, Danutė Budreikaitė, Elisa Ferreira, Małgorzata Handzlik, Jens Holm, Eugenijus Maldeikis, Zuzana Roithová
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Corien Wortmann-Kool, Sepp Kusstatscher

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Miroslav Ouzký  
Chairman  
Committee on the Environment, Public Health and Food Safety  
BRUSSELS

Subject: Opinion on the legal basis of the proposal for a Regulation of the European Parliament and the Council on the banning of exports and the safe storage of metallic mercury (COM(2006)0636 – C6-0363/2006 – 2006/0206(COD))<sup>1</sup>

Dear Mr Chairman,

By letter of 4 May 2007 you asked the Committee on Legal Affairs pursuant to Rule 35(2), to consider whether the legal basis of the above Commission proposal was valid and appropriate.

The committee considered the above question at its meeting of 11 June 2007.

The proposal has a dual legal basis, Article 133 and Article 175(1) of the EC Treaty.

The Committee adopted an amendment to the proposal deleting Article 133 as legal basis, as it considered that such a double legal basis was not justified in so far as the proposed act does not simultaneously pursue several objectives without one being secondary and indirect in relation to the other.

On the contrary, the Commission, in its explanatory memorandum, stated that the measure is motivated by the objectives of protecting human health and the environment and not by commercial policy considerations.

### **The legal bases under consideration:**

#### *Article 133*

*1. The common commercial policy shall be based on uniform principles, particularly in regard to changes in tariff rates, the conclusion of tariff and trade agreements, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies.*

*2. The Commission shall submit proposals to the Council for implementing the common commercial policy.*

*3. Where agreements with one or more States or international organisations need to be*

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<sup>1</sup> Not yet published in OJ.

*negotiated, the Commission shall make recommendations to the Council, which shall authorise the Commission to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Community policies and rules.*

*The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee on the progress of negotiations.*

*The relevant provisions of Article 300 shall apply.*

*4. In exercising the powers conferred upon it by this Article, the Council shall act by a qualified majority.*

*5. Paragraphs 1 to 4 shall also apply to the negotiation and conclusion of agreements in the fields of trade in services and the commercial aspects of intellectual property, in so far as those agreements are not covered by the said paragraphs and without prejudice to paragraph 6.*

*By way of derogation from paragraph 4, the Council shall act unanimously when negotiating and concluding an agreement in one of the fields referred to in the first subparagraph, where that agreement includes provisions for which unanimity is required for the adoption of internal rules or where it relates to a field in which the Community has not yet exercised the powers conferred upon it by this Treaty by adopting internal rules.*

*The Council shall act unanimously with respect to the negotiation and conclusion of a horizontal agreement insofar as it also concerns the preceding subparagraph or the second subparagraph of paragraph 6.*

*This paragraph shall not affect the right of the Member States to maintain and conclude agreements with third countries or international organisations in so far as such agreements comply with Community law and other relevant international agreements.*

*6. An agreement may not be concluded by the Council if it includes provisions which would go beyond the Community's internal powers, in particular by leading to harmonisation of the laws or regulations of the Member States in an area for which this Treaty rules out such harmonisation.*

*In this regard, by way of derogation from the first subparagraph of paragraph 5, agreements relating to trade in cultural and audiovisual services, educational services, and social and human health services, shall fall within the shared competence of the Community and its Member States. Consequently, in addition to a Community decision taken in accordance with the relevant provisions of Article 300, the negotiation of such agreements shall require the common accord of the Member States. Agreements thus negotiated shall be concluded jointly by the Community and the Member States.*

*The negotiation and conclusion of international agreements in the field of transport shall continue to be governed by the provisions of Title V and Article 300.*

7. Without prejudice to the first subparagraph of paragraph 6, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may extend the application of paragraphs 1 to 4 to international negotiations and agreements on intellectual property in so far as they are not covered by paragraph 5.

#### *Article 175*

1. The Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions, shall decide what action is to be taken by the Community in order to achieve the objectives referred to in Article 174.

2. By way of derogation from the decision-making procedure provided for in paragraph 1 and without prejudice to Article 95, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, the Economic and Social Committee and the Committee of the Regions, shall adopt:

(a) provisions primarily of a fiscal nature;

(b) measures affecting:

— town and country planning,

— quantitative management of water resources or affecting, directly or indirectly, the availability of those resources,

— land use, with the exception of waste management; (c) measures significantly affecting a Member State's choice between different energy sources and the general structure of its energy supply.

The Council may, under the conditions laid down in the first subparagraph, define those matters referred to in this paragraph on which decisions are to be taken by a qualified majority.

3. In other areas, general action programmes setting out priority objectives to be attained shall be adopted by the Council, acting in accordance with the procedure referred to in Article 251 and after consulting the Economic and Social Committee and the Committee of the Regions.

The Council, acting under the terms of paragraph 1 or paragraph 2 according to the case, shall adopt the measures necessary for the implementation of these programmes.

4. Without prejudice to certain measures of a Community nature, the Member States shall finance and implement the environment policy.

5. Without prejudice to the principle that the polluter should pay, if a measure based on the provisions of paragraph 1 involves costs deemed disproportionate for the public authorities of a Member State, the Council shall, in the act adopting that measure, lay down appropriate



*provisions in the form of:*

— *temporary derogations, and/or*

— *financial support from the Cohesion Fund set up pursuant to Article 161.*

**The content of the Regulation may be analysed as follows:**

**Article 1** - Subject matter, scope and definitions.

The proposed Regulation sets out the requirement to ban the export of metallic mercury as from 1 July 2011.

**Article 2** - Sets out a requirement to store metallic mercury in a way which is safe for human health and the environment.

The three most relevant sources of metallic mercury in the Community are covered by this obligation. The storage obligation applies to mercury independently whether or not it is classified as waste. Storage in this context does not only cover short-to medium-term options, but also encompasses long-term options. In terms of timing, this aspect is linked to the entry into force of the export ban for metallic mercury and calomel.

**Article 3** - Clarifies the interface with existing waste legislation.

Under the given legal situation, any storage of metallic mercury (which is liquid) in any kind of landfill would conflict with Article 5 (3) (a) of Directive 1999/31/EC. The leaching limit values and other criteria laid down in section 2.4 of Council Decision 2003/33/EC establishing criteria and procedures for the acceptance of waste at landfills, applicable to granular waste, cannot be applied in the case of liquid mercury. Article 3 proposes to derogate from these rules with regard to two specific storage options for metallic mercury, namely underground storage in salt mines adapted for the purpose and temporary storage in dedicated facilities which can be considered safe for human health and the environment.

**Article 4** - Complements Article 2 by adding some more detailed requirements for the application of the two storage options.

It focuses on the need to carry out a proper safety assessment, taking into account the nature of the substance. It also stipulates minimum requirements as to the content of the relevant permit for temporary storage facilities.

**Article 5** - Provides for the exchange of information between Member States and industry.

The exchange of information is not to be limited to metallic mercury alone, but also encompass mercury compounds and products containing mercury.

**Article 6** - Imposes some information obligations on the Member States.

It provides that Member States are to submit copies of permits given to mercury storage facilities to the Commission. Member States also have to inform the Commission on the

effects of the instrument three years and five months after the entry into force of the export ban at the latest.

**Article 7** - Provides that the Commission is to assess the application of the Regulation and its effects on the market and deliver a report no later than four years after the entry into force of the export ban.

The assessment will be based on information submitted by Member States.

**Article 8** - Stipulates that the Commission has to report to Parliament and to the Council on international developments relating to mercury, in particular on multilateral negotiations on supply and demand issues.

This should allow monitoring the coherence of global and Community measures, with the aim of obtaining the maximum benefits for the environment.

**Article 9** - The standard text concerning the entry into force of the instrument.

### **Appraisal**

The legal basis defines the Community's competence *ratione materiae* and specifies how that competence is to be exercised, namely the legislative instrument(s) which may be used and the decision-making procedure.

In the light of the above, it is to be established whether Article 133 together with Article 175(1), Article 133 alone or Article 175(1) alone should constitute the proper legal basis of the proposed Regulation.

From an analysis of the proposal, it is clear that its fundamental purpose is to protect human health and the environment, and that it is not motivated by commercial policy considerations.

At its meeting of 11 June 2007 the Committee on Legal Affairs accordingly decided, unanimously<sup>1</sup>, to recommend that the appropriate legal basis for the proposal for a Regulation of the European Parliament and the Council on the banning of exports and the safe storage of metallic mercury (COM(2006)0636) is Article 175(1) of the EC Treaty.

Yours sincerely,

Giuseppe Gargani

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<sup>1</sup> The following were present for the final vote: Cristian Dumitrescu (acting chairman), Lidia Joanna Geringer de Oedenberg (vice-chairwoman), Manuel Medina Ortega (draftsman), Carlo Casini, Janelly Fourtou, Luis de Grandes Pascual, Kurt Lechner, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Hans-Peter Mayer, Michel Rocard, Aloyzas Sakalas, Gabriele Stauner, József Szájer, Jaroslav Zvěřina and Tadeusz Zwiefka.

## PROCEDURE

<b>Title</b>	The banning of exports and the safe storage of metallic mercury
<b>References</b>	COM(2006)0636 - C6-0363/2006 - 2006/0206(COD)
<b>Date submitted to Parliament</b>	26.10.2006
<b>Committee responsible</b> Date announced in plenary	ENVI 14.11.2006
<b>Committee(s) asked for opinion(s)</b> Date announced in plenary	INTA                      ITRE 14.11.2006                14.11.2006
<b>Not delivering opinions</b> Date of decision	ITRE 27.2.2007
<b>Rapporteur(s)</b> Date appointed	Dimitrios Papadimoulis 28.11.2006
<b>Date adopted</b>	3.5.2007
<b>Result of final vote</b>	+:                      39 -:                      10 0:                      0
<b>Members present for the final vote</b>	Adamos Adamou, Margrete Auken, Liam Aylward, Pilar Ayuso, Martin Callanan, Chris Davies, Avril Doyle, Anne Ferreira, Karl-Heinz Florenz, Matthias Groote, Satu Hassi, Gyula Hegyi, Jens Holm, Marie Anne Isler Béguin, Dan Jørgensen, Christa Kläß, Eija-Riitta Korhola, Holger Kraemer, Urszula Krupa, Peter Liese, Jules Maaten, Marios Matsakis, Linda McAvan, Alexandru-Ioan Morțun, Roberto Musacchio, Péter Olajos, Miroslav Ouzký, Dimitrios Papadimoulis, Vittorio Prodi, Dagmar Roth-Behrendt, Guido Sacconi, Karin Scheele, Carl Schlyter, Richard Seeber, María Sornosa Martínez, Antonios Trakatellis, Evangelia Tzampazi, Thomas Ulmer, Anja Weisgerber, Glenis Willmott
<b>Substitute(s) present for the final vote</b>	Christofer Fjellner, Jutta Haug, Karin Jöns, Henrik Lax, Miroslav Mikolášik, Stefan Sofianski, Bart Staes
<b>Substitute(s) under Rule 178(2) present for the final vote</b>	Gabriela Crețu, Miguel Angel Martínez Martínez