



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 20.4.2007
COM(2007) 205 final

2006/0018 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to the second subparagraph of Article 251 (2) of the EC Treaty

concerning the

common position of the Council on the adoption of a proposal for a Directive of the European Parliament and of the Council amending Council Directive 76/769/EEC relating to restrictions on the marketing of certain measuring devices containing mercury

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(Text with EEA relevance)

1. BACKGROUND

Date of transmission of the proposal to the EP and the Council 21 February 2006
(document COM(2006) 0069 final – 2006/0018 (COD):

Date of the opinion of the European Economic and Social Committee: 13 September 2006

Date of the opinion of the European Parliament, first reading: 14 November 2006

Date of political agreement (Competitiveness Council): 13 December 2006

Date of adoption of the common position: 19 April 2007

2. OBJECTIVE OF THE COMMISSION PROPOSAL

The Directive would impose restrictions on the marketing of certain measuring devices containing mercury to preserve the internal market while providing a high level of protection of human health and the environment.

The present proposal is the first of a series of planned legislative actions to implement the Community Strategy on Mercury adopted in January 2005. The restrictions would ban the placing on the market of mercury fever thermometers (for sale to the general public and to professional users) and of all other mercury containing devices for sale to the general public. Measuring devices in the healthcare sector other than fever thermometers are excluded from the ban on the grounds of patient safety as there is no certainty yet that reliable and equally performing alternatives are available. Other professional and scientific uses are very limited and are not included in the restriction on the grounds of proportionality.

3. COMMENTS ON THE COMMON POSITION

3.1 General comments on the common position

The Commission can support the Council's common position. The common position is in line with the compromise that was reached in informal discussions between the Council, the Rapporteur of the European Parliament and the Commission, which did, however, not find a majority in the European Parliament. The common position was supported by all Member States except DK and SE which opposed the proposal because the sale of sphygmomanometers (blood pressure gauges) for use in the health care sector would not be banned.

3.2 European Parliament amendments included in the modified proposal and common position

The common position includes all of the European Parliament's amendments that could be accepted by the Commission. These are: (i) amendments 12, 16, 17 which were accepted by the Commission in full as they improve the clarity of the recitals, (ii) amendments 18 (final part) and 15 which call on the Commission to review the availability of alternatives for mercury sphygmomanometers and other measuring devices in industrial and professional uses with a view to extending the restrictions and (iii) amendments 13 and 19 (first part) which permit the continued trade in "antique" measuring devices that contain mercury because such trade is limited in extent and does not pose a risk to human health or to the environment.

3.3 European Parliament amendments not included in the amended proposal and not incorporated in the common position

A number of amendments were not accepted by the Commission and are not included in the common position. These are: (i) amendment 6 because there is no scientific basis for extending restrictions to mercury-containing devices other than those described in the proposal, (ii) amendment 8 as the Commission cannot accept a ban on sphygmomanometers in the healthcare sector which, according to the majority of medical experts, are essential for calibration purposes as well as for diagnosis and treatment of specific patient conditions, (iii) amendment (9) as it would not change the meaning of the original text but is less clear, and (iv) amendment 19 (final part) as the Commission cannot support a permanent derogation for barometers intended for sale to the general public as mercury-free alternatives are already widely available at comparable cost.

3.4 Commission position on the new provisions introduced by the Council

The common position incorporates changes to the original proposal which can be supported by the Commission. Apart from certain clarifications in the recitals, the main changes concern the following additions: (i) a permanent derogation for antique measuring devices (ii) a temporary derogation for the sale of barometers to the general public with a view to their phase-out within 2 years (iii) a review by the Commission two years after entry into force of the directive concerning the availability of safer alternatives to sphygmomanometers and other measuring devices.

3.5 Major problems encountered in adoption of the common position

Sweden and Denmark voted against the common position as they consider that adequate alternatives for mercury containing sphygmomanometers in the healthcare sector are available and their marketing should be banned.

4. CONCLUSIONS

The Commission supports the common position.

5. STATEMENTS BY THE COMMISSION

None.