

Opinion of the European Economic and Social Committee on the Proposal for a regulation of the European Parliament and the Council on the banning of exports and the safe storage of metallic mercury

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(2007/C 168/09)

On 15 November 2006 the Council decided to consult the European Economic and Social Committee, under Articles 133 and 175(1) of the Treaty establishing the European Community, on the above-mentioned proposal.

The Section for Agriculture, Rural Development and the Environment, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 21 March 2007. The rapporteur was Mr Osborn.

At its 435th plenary session, held on 25 and 26 April 2007 (meeting of 25 April 2007), the European Economic and Social Committee adopted the following opinion by 126 votes and 4 abstentions.

1. Conclusions and recommendations

1.1 The Committee supports the European Union's active engagement with international efforts to restrict the production, and use of mercury throughout the world and to ensure safe methods of storage and disposal. Towards this end, it is important that Europe sets a good example in its own handling of the mercury problem within the Union, and to support better control measures throughout the world.

1.2 The Committee therefore supports the general objective of the specific Commission proposal in the current proposed Regulation to ban the export of mercury from Europe and to require the safe storage of surplus mercury within Europe. The EESC believes that banning the export of metallic mercury from Europe and requiring that it be safely stored pending disposal is particularly relevant and timely in current circumstances as the mercury based chlor-alkali process is now being phased out in Europe.

1.3 Looking ahead, the Committee urges the Commission to implement the other elements of its mercury strategy as soon as possible, and to develop measures to further reduce the use of mercury in processes and products within Europe, and to ensure that mercury in waste streams is disposed of safely.

1.4 The Committee believes that the legal ban should come into effect at as early a date as is reasonably possible, and that until that time the Commission and the firms concerned should be encouraged to do whatever they can to reduce exports to a minimum.

1.5 The Committee supports the storage arrangements proposed by the Commission in this Regulation as being the best available for the present. Safety assessments must be carried out by the competent authorities of any proposed storage facilities, and they should provide for regular monitoring of the sites once they are in operation. The Committee urges the Commission to seek reports from Member States about progress concerning this issue, and further measures must be proposed if storage arrangements prove unsatisfactory.

2. Background to the opinion

2.1 Mercury is a natural component of the earth, with an average abundance of approximately 0.05 mg/kg in the Earth's crust, with significant local variations. Mercury is also present at very low levels throughout the biosphere. Its absorption by plants may also account for the presence of mercury within fossil fuels like coal, oil and gas.

2.2 Environmental mercury levels have increased considerably since the on-set of the industrial age. The burning of fossil fuels releases significant quantities of mercury. In addition mercury is extracted from minerals (principally cinnabar) and is used in a variety of industrial applications. Mercury from industrial processes and from waste products also diffuses into the environment. Past practices have left a legacy of mercury in landfills, mine tailings, contaminated industrial sites, soils and sediments. Even regions with no significant mercury releases, such as the Arctic, are affected due to the transcontinental and global transport of mercury.

2.3 Once released, mercury persists in the environment where it circulates between air, water, sediments, soil and biota in various forms. Its form can change (primarily by microbial metabolism) to methylmercury, which has the capacity to collect in organisms (**bioaccumulate**) and to concentrate up food chains (**biomagnify**), especially in the aquatic food chain (fish and marine mammals). Methylmercury is therefore the form of greatest concern. Nearly all of the mercury in fish is methylmercury.

2.4 Mercury is now present in various environmental media and food (especially fish) all over the globe at levels that adversely affect humans and wildlife. In some parts of the world, including parts of Europe, significant numbers of the human population are exposed to mercury significantly above safe levels. There is widespread international agreement that releases of mercury to the environment should be minimised and phased out wherever possible, and as quickly as possible.

2.5 Despite a decline in global mercury consumption (global demand is less than half of 1980 levels) and low prices, production of mercury from mining is still occurring in a number of countries around the world. In Europe, primary production has now ceased, but mercury is still isolated as a by-product of other extractive processes.

2.6 Large quantities of mercury are also coming onto the global market as a result of the conversion or shutdown of chlor-alkali facilities in Europe that have used the mercury process. This residual mercury is typically sold at a low price to Miñas de Almadén in Spain, which then sells it to countries around the world.

2.7 Despite best efforts, neither Euro Chlor nor Almadén can ensure that the mercury exported from the EU under this agreement will not contribute to further global pollution because of loss of control once it leaves Almadén's facilities. It could thus encourage greater use of mercury in unregulated processes and products in other countries and to greater quantities of mercury contaminated waste or emissions. It is therefore desirable that this substantial influx of surplus mercury from discontinued mercury based chlor-alkali processes be prevented from coming onto the global market.

3. Summary of the Commission's proposal

3.1 On 28 January 2005, the Commission adopted the Communication to the Council and the European Parliament on a Community Strategy Concerning Mercury (COM(2005) 20 final). The Strategy proposed twenty actions addressing all aspects of the mercury life cycle. Two of the actions proposed by the Strategy concern exports and storage of mercury.

3.2 The Commission's Proposal for a regulation on the banning of exports and the safe storage of metallic mercury now takes these actions forward. The Proposal aims at banning the export of metallic mercury from the Community as well as at ensuring that this mercury does not re-enter the market and is safely stored, in line with actions 5 and 9 identified in the Community Strategy Concerning Mercury. The fundamental purpose is to limit further additions to the 'global pool' of mercury already released.

3.3 The proposed Regulation would ban mercury exports from the EU from 1 July 2011. From the same date, mercury no longer used in the chlor-alkali industry as well as mercury gained from the purification of natural gas or production of non-ferrous metals would have to be safely stored.

3.4 The Commission has consulted widely on its proposal and MAYASA, the Spanish government and the European chlor-alkali industry — the stakeholders most directly affected — have agreed to the ban from the date proposed. The Commission has taken note that CEFIC, the European chemical industry organisation, has given a voluntary commitment to ensure safe storage of mercury from the chlor-alkali industry from 1 July 2011.

4. General comments

4.1 The Committee strongly supports the objective of making Europe a leader in global efforts to reduce releases and

emissions of mercury to the environment by restricting production and consumption of mercury, and encouraging substitution by other safer materials, processes and products. The Committee believes that the REACH Regulation would facilitate such endeavours.

4.2 The Committee is glad to note that the mining and extraction of mercury from mercury bearing ores has now ceased within the European Union. The Committee considers that the Commission should continue to keep this matter under review and to stand ready to impose a ban if there were ever any prospect of resumption of such extraction of mercury within Europe for commercial reasons. The EESC also recommends the Commission to consider further measures to discourage the production of mercury as a by-product from the extraction of other minerals, and to ensure the safe storage and disposal of surplus mercury.

4.3 Looking outside Europe, the Committee supports the European Union's active engagement with international efforts to restrict the production, and use of mercury throughout the world and to ensure safe methods of storage and disposal. Towards this end, it is important that Europe sets a good example in its own handling of the mercury problem within the Union, and supports better control measures throughout the world.

4.4 In this context, banning the export of metallic mercury from Europe and requiring that it be safely stored pending disposal is one useful step. It is particularly relevant and timely in current circumstances when the phasing out of the mercury based chlor-alkali process in Europe might otherwise have released large quantities of surplus mercury onto the world market. The Committee therefore supports the general objective of the specific Commission proposal in the current proposed Regulation to ban the export of mercury from Europe and to require the safe storage of surplus mercury within Europe.

4.5 This cannot however be the end of the story. The Committee looks to the Commission to undertake further work with a view to developing measures to further reduce the use of mercury in processes and products within Europe, and to ensure that mercury in waste streams is disposed of safely. The EESC also urges the Commission to consider further what steps can be taken internationally to promote better management of mercury throughout the world, including the negotiation of appropriate measures of cooperation to support the transfer of mercury-substituting technologies and mercury capture and storage solutions, and possibly an international agreement on the management and control of mercury.

5. Specific comments

5.1 The Committee notes that the present proposal applies only to the export of metallic mercury (Article 1). The EESC believes that it is urgent to give further consideration to the possibility of extending the ban to mercury compounds and mercury-containing products as provided by Article 5. It would be desirable to specify a timetable for this review. Further measures should also be considered to require the replacement of mercury with less toxic or polluting materials in products and processes within the Union.

5.2 The Commission originally proposed that the ban should become effective in 2011. The Parliament recommended bringing this forward to 2010. The NGOs continue to press for the ban to become effective at an earlier date. The Committee believes that the legal ban should come into effect at as early a date as is reasonably possible, and that until that time the Commission and the firms concerned should be encouraged to do whatever they can to reduce exports to a minimum.

5.3 The Commission proposes (Article 2) that mercury arising from discontinued chlor-alkali processes, mercury gained from cleaning of natural gas, and mercury gained from non-ferrous mining and smelting operations should be stored safely. Article 3 specifies storage either in an underground salt mine or in a facility specially designed for the temporary storage of metallic mercury. Such facilities must demonstrate prescribed safety and management practices. It should be the responsibility of a member state to establish such facilities, or, to join other MS with more favourable conditions to do this. Together with the export ban, these provisions are intended to ensure that these surplus quantities of mercury from major industrial processes are removed altogether from the market and are held in a safe way.

5.4 The Committee supports these storage arrangements as being the best available for the present. The Committee considers it very important that EIA and the safety assessments to be carried out by the competent authorities of any proposed storage facilities be conducted thoroughly and rigorously, and that they should provide for regular monitoring of the sites once they are in operation. The Committee urges the Commission to seek reports from Member States about progress concerning this issue, and to stand ready to propose further measures if storage arrangements prove unsatisfactory.

5.5 It is important that the operators that have used the mercury should bear the cost of storing it in a safe way. The Committee notes that the storage arrangements for the surplus mercury arising from the discontinuation of the chlor-alkali processes are to be implemented in consultation and agreement with relevant industrial firms, and that Eurochlor are developing

a voluntary agreement in parallel with the Regulation committing their members to using safe storage facilities. The Committee welcomes this initiative by a responsible industry grouping. Provided that these arrangements embrace all the relevant firms and can be made secure in a transparent way that can be monitored, the Committee agrees that this will be the best way to secure effective implementation. The Committee recommends that the Commission should explore the possibility of reaching similar agreements with other major industrial producers of metallic mercury such as the power industry and the non-ferrous mining and smelting industry.

5.6 The Committee emphasises that monitoring and enforcement of the new arrangements will be particularly important. Requiring mercury to be stored and disposed will in effect turn mercury from being an asset that can be marketed into a liability that will impose costs on its holders. In such circumstances there will be temptations for unscrupulous operators to try to avoid channelling the mercury to proper disposal routes, and to divert it towards illegal landfills. Rigorous record-keeping and oversight will be necessary in order to avoid such untoward outcomes.

5.7 The Committee urges the Commission to consider further action to implement other elements of the mercury strategy as soon as possible. In particular the EESC regards it as important to encourage the phasing out of mercury from lighting products, from jewellery, from dentistry and cosmetic products as soon as possible, and to accelerate measures to reduce or eliminate mercury emissions from large combustion plants, from crematoria and from other significant sources of mercury air pollution. Further measures may also be needed to ensure that when significant quantities of mercury are found to be present in other waste streams these are captured for storage or disposal rather than left to diffuse and pollute the wider environment. All such further measures should of course be fully evaluated in terms of the extent of the contribution of the activity concerned to the global mercury problem, and to the costs and impacts of the proposed solutions.

Brussels, 25 April 2007.

The President
of the European Economic and Social Committee
Dimitris DIMITRIADIS
