



EUROPEAN COMMISSION

*Brussels, 15.6.2016
C(2016) 3747 final*

Dear President,

The Commission would like to thank the Bundesrat for its Opinion on the Commission proposal for a Regulation of the European Parliament and the Council on mercury {COM(2016) 39 final}.

The Commission welcomes the Bundesrat's overall support to the Commission proposal and for the aim of further reducing mercury emissions as a result of the ratification by the Union and its Member States and the entry into force of the Minamata Convention on Mercury. The proposal fits well with the overall policy framework, the EU Mercury Strategy, adopted by the Commission in 2005 {COM(2005) 20 final} and reviewed in 2010 {COM(2010) 723 final}. As the Convention has been inspired to a great extent by existing Union legislation, the current proposal seeks to close the few remaining gaps and to ensure full alignment with the Convention.

In response to the specific comments in the Opinion the Commission would like to refer the Bundesrat to the attached annex.

The points made in this reply are based on the initial proposal presented by the Commission which is currently in the legislative process involving both the European Parliament and the Council in which the German government is represented.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Bundesrat and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Frans Timmermans
First Vice-President*

*Karmenu Vella
Member of the Commission*

*Mr Stanislaw TILLICH
President of the Bundesrat
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ANNEX

The Commission has carefully considered each of the issues raised by the Bundesrat in its Opinion and is pleased to offer the following clarifications.

Import restrictions and exceptions on exports (Articles 4 and 5 of the proposal)

With regard to the Bundesrat's concerns on imports of mercury from countries that are not Parties to the Convention and the exemptions foreseen in relation to mercury-added products, the Commission would like to underline that these provisions correspond to the requirements set out in the Minamata Convention on Mercury. On the basis of an evaluation, the Convention foresees a review of these provisions by the Conference of the Parties.

Disposal of mercury waste (Article 13 of the proposal)

The Commission acknowledges the importance of the permanent withdrawal of metallic mercury from the market and the environment through safe disposal and notes the Bundesrat's suggestion for prior solidification in this respect. In line with the Convention, EU law ensures the environmentally sound management of mercury waste, and the Commission proposal takes into account all relevant issues and information, including the guidelines developed under the Basel Convention.

Manufacturing processes (Annex III to the proposal)

The Commission recognises potential interpretation issues regarding the term "per unit production" as it appears in Part II of Annex B to the Convention in relation to the reduction of mercury emissions and releases from alcoholates production. However, the Commission would like to point out that the text of the German translation of the Convention (Herstellung je Produktionsstätte) annexed to the relevant Council ratification decision {COM(2016) 42 final} deviates from the original text. The Commission is analysing this issue and its repercussions and the need to take appropriate steps to resolve it.

Phasing out of emissions under the Water Framework Directive

The Commission notes the Bundesrat's concern that the requirement set out in Article 16 of the Water Framework Directive to phase out discharges, emissions and losses of mercury to water needs to be met within 20 years of the adoption of the relevant measures. The Bundesrat suggests that a proposal and timetable for ending discharges, emissions and losses in accordance with Article 16(6) of the Directive be included in the proposal. The Commission wishes to recall that the Regulation would not replace, but complement the Union's existing instruments for combatting emissions of mercury to water, including measures identified when the Environmental Quality Standards Directive was adopted in 2008 and other legislative acts that have been adopted since then, for example the legislation on individual substances, the REACH Regulation, the Persistent Organic Pollutants (POPs) Regulation, the Industrial Emissions Directive, the Plant Protection Products Regulation, the Biocidal Products Regulation, and the Waste Framework Directive.

Implementing powers

The Bundesrat expresses concern with regard to the proposal's conferral of implementing powers on the Commission to authorise the use of mercury in new products or processes when it can be demonstrated that they would provide significant environmental and health benefits and that no economically feasible mercury-free alternatives providing such benefits are available.

The Commission's approach to the delegation of powers is based on the principle that acts adopted through a legislative procedure best ensure the democratic legitimacy envisaged by the Treaty. However, properly used, implementing as well as delegated powers are an integral tool of better law-making, contributing to simple and up-to-date legislation and its efficient and swift implementation. As regards the present proposal, the Commission finds that such implementing powers are necessary in order to ensure the swift implementation of future decisions of the Conference of the Parties of the Minamata Convention on mercury. The Commission would also like to recall that the implementing powers conferred on it would be subject to an examination procedure by a Committee in which all Member States are represented.

Emissions from large combustion plants

The Commission confirms that mercury emissions from large combustion plants are not covered by the proposal. In that regard the Commission considers that the Industrial Emissions Directive¹ provides the necessary provisions to fulfil the relevant requirements in the Convention and that no additional provisions are therefore needed in the proposal.

Mercury in lamps

The Commission notes the Bundesrat's call for further restrictions on lamps containing mercury. In that regard, the Commission recalls that its proposal is based on the analysis presented in the Impact Assessment {SWD/2016/017 final} which concluded that aligning relevant EU legislation to the Convention while maintaining existing stricter provisions was the preferred option.

¹ Directive 2010/75/EU of the European Parliament of the Council of 24 November 2010 on industrial emissions, OJ L 334, 17.12.2010, pp. 17-119.