



Council of the
European Union

Brussels, 17 July 2023
(OR. en)

11915/23

ENV 869
COMER 93
MI 627
ONU 49
SAN 459
IND 400
DELECT 102

COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	14 July 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

No. Cion doc.:	C(2023) 4683 final
Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 14.7.2023 amending Regulation (EU) 2017/852 of the European Parliament and of the Council as regards mercury-added products subject to manufacturing, import and export prohibitions

Delegations will find attached document C(2023) 4683 final.

Encl.: C(2023) 4683 final



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COMMISSION DELEGATED REGULATION (EU) .../...

of 14.7.2023

amending Regulation (EU) 2017/852 of the European Parliament and of the Council as regards mercury-added products subject to manufacturing, import and export prohibitions

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The policy and legal context of this Delegated Regulation consists of the EU policy and law on mercury and the Minamata Convention on Mercury (hereafter, ‘Minamata Convention’ or ‘Convention’).¹

Regulation (EU) 2017/852 on mercury

Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury and repealing Regulation (EC) No 1102/2008 (hereafter, ‘Mercury Regulation’)² is the main instrument of Union law (i) regulating the use of mercury and mercury compounds (hereafter, ‘mercury’), including in mercury-added products (hereafter ‘MAPs’)³ and (ii) transposing into EU law the Minamata Convention and the legally-binding decisions adopted by the Conference of the Parties (hereafter, ‘Minamata COP’).

The Mercury Regulation aims at protecting human health and the environment from anthropogenic emissions and releases of mercury and, in doing so, addresses the entire life-cycle of mercury from primary mercury mining to the final disposal of mercury waste. This Regulation was developed and adopted as a means to pursue and implement the ultimate objective of EU policy on mercury, i.e. to phase out over time the use of mercury. This objective was clearly spelled out in the EU strategy on mercury from 2005⁴ as reviewed in 2010⁵, which called upon the Union to take measures *inter alia* to reduce the use of mercury by cutting supply and demand.

As a follow-up to the EU strategy on mercury, the Council of the European Union concluded on the use of mercury in products as follows:

‘Mercury-added products, where viable alternatives exist, should be phased out as rapidly and as completely as possible, with the ultimate goal that all mercury-added products should be phased-out, taking into due account technical and economic circumstances and the needs for scientific research and development.’⁶

Article 5 and Annex II to the Mercury Regulation address MAPs. Article 5(1) provides that the export, import and manufacturing in the Union of the MAPs set out in Annex II shall be prohibited as from the phase-out dates set out therein. As an exemption, in accordance with Article 5(2), this prohibition does not apply to MAPs that are essential for civil protection and

¹ The text of the Minamata Convention is available here: <https://www.mercuryconvention.org/en/about>

² OJ L 137, 24.05.2017, p. 1.

³ Article 2(4) of the Mercury Regulation defines ‘mercury-added products’ as products or product components that contain mercury or a mercury compound that was intentionally added.

⁴ Communication from the Commission - Community Strategy Concerning Mercury, COM(2005) 20 final, 28.01. 2005.

⁵ Communication from the Commission on the review of the Community Strategy Concerning Mercury, COM(2010) 723 final, 07.12.2010.

⁶ Council conclusions *Review of the Community Strategy concerning Mercury*, 3075th Environment Council meeting, Brussels, 14 March 2011.

military uses or used for research, calibration of instrumentation, or for use as a reference standard.

The MAPs referred to in Annex II to the Mercury Regulation include *inter alia* selected batteries and accumulators, switches and relays, mercury-containing lamps (e.g. certain compact fluorescent lamps) and non-electronic measuring devices (e.g. thermometers, strain gauges to be used with plethysmographs). Those MAPs are subject to a manufacture, import and export prohibition as from 31 December 2018 or 31 December 2020. The MAPs listed in Annex II are products for which technically and economically feasible mercury-free alternatives are available and, as specified in Recital (14) of the Preamble of the Mercury Regulation, account for a significant share of mercury use within the Union and globally.

With a view to reducing the production and use of MAPs, Article 8 of the Mercury Regulation sets strict conditions regarding the specific case of ‘new’ MAPs, i.e. MAPs that were not manufactured prior to 1 January 2018. In particular, this provision prohibits their manufacturing and placing on the market unless authorised to do so by the European Commission. Such an authorisation can only be given if it is demonstrated that the ‘new’ MAP provides significant environmental or health benefits and poses no significant risks either to the environment or to human health, and that no technically practicable mercury-free alternatives providing such benefits are available.

Regarding the interplay between the Mercury Regulation and the Minamata Convention on MAPs, Article 20 of that Regulation empowers the Commission to adopt delegated acts to amend *inter alia* its Annex II to align it with decisions adopted by the Minamata COP. Such an empowerment can only apply if the Union supported the Minamata COP decision concerned by means of a Council Decision adopted under Article 218(9) of the Treaty on the Functioning of the European Union (TFEU). **Hence, Article 20 of the Mercury Regulation establishes the legal basis for this Delegated Regulation.**

The Minamata Convention on Mercury

The Minamata Convention entered into force on 16 August 2017 and has to date been ratified by the European Union⁷ and 136 countries, including all the EU Member States. The Minamata Convention is the main international legal framework seeking to protect human health and the environment from anthropogenic emissions and releases of mercury to air, water and land. Like the Mercury Regulation, it addresses the whole life-cycle of mercury, from primary mercury mining to mercury waste disposal.

This Convention also establishes a prohibition to manufacture, import and export (Article 4(1)) applicable to the MAPs listed in its Annex A (Part I). Since the Union was instrumental in shaping the provisions of the Minamata Convention, including those addressing MAPs, the list of concerned MAPs mirrors to a large extent the list of MAPs contained in Annex II to the Mercury Regulation.

Pursuant to Article 4(4), (7) and(8) of the Minamata Convention, its Annex A had to be reviewed no later than five years after the entry into force of the Convention, taking into account Parties’ proposals for amendments as well as information transmitted on MAPs and

⁷ Council Decision (EU) 2017/939 of 11 May 2017 on the conclusion on behalf of the European Union of the Minamata Convention on Mercury (OJ L 142, 2.6.2017, p. 4).

available technical and economic mercury-free alternatives together with data on associated environmental and human health risks and benefits.

Decision amending Annex A (Part I) to the Minamata Convention

Considering the date of entry into force of the Convention and its Article 4(4), (7) and (8), Parties were therefore expected to adopt a Decision on amendments to Annex A to the Convention at the second segment of the fourth meeting of the Minamata COP (COP4.II, 21-25 March 2022).

In this respect, with a view to continuing to be an active and instrumental Party, the Union transmitted on 31 March 2020 to the Secretariat of the Minamata Convention information on a number of MAPs and their available technically and economically feasible mercury-free alternatives, in accordance with Article 4(4) of that Convention. The Union then communicated on 30 April 2021 to the Secretariat a formal proposal for amending *inter alia* Annex A (Part I) to the Minamata Convention, in line with Article 4(7) of that Convention⁸. This EU proposal provided for the following MAPs to be added to Annex A (Part I):

- Button zinc silver oxide batteries with a mercury content < 2 % and button zinc air batteries with a mercury content < 2 %,
- Halophosphate phosphor linear fluorescent lamps (LFLs) for general lighting purposes,
- Non-electronic measuring devices: (a) strain gauges to be used in plethysmographs; (b) tensiometers,
- Electrical and electronic measuring devices: (a) melt pressure transducers, transmitters and sensors; (b) mercury vacuum pumps,
- Polyurethane, including canisters for the application of polyurethane.

Additionally, two other formal proposals for amending Annex A (Part I) were made by (i) the African Region and (ii) Switzerland/Canada.

The African Region's formal proposal provided for the following MAPs to be added to Annex A (Part I):

- Compact fluorescent lamps with an integrated ballast (CFL.i) for general lighting purposes that are ≤ 30 watts (hereafter, 'CFL.i ≤ 30 watts'),
- Linear fluorescent lamps (LFLs) for general lighting purposes: (a) Triband phosphor ≤ 60 watts; (b) Halophosphate phosphor ≤ 40 watts,
- Cold cathode fluorescent lamps (CCFL) and external electrode fluorescent lamps (EEFL) for electronic displays of all lengths.

⁸ Council Decision (EU) 2021/727 of 29 April 2021 on the submission, on behalf of the European Union, of proposals to amend Annexes A and B to the Minamata Convention on Mercury, regarding mercury-added products and manufacturing processes in which mercury or mercury compounds are used (OJ L 155, 5.5.2021, p. 23).

Regarding the joint Switzerland/Canada's formal proposal, it proposed that the following MAPs be added to Annex A (Part I):

- Counter balancing devices including tire balancers and wheel weights,
- Photographic film and paper,
- Propellant for satellites and spacecraft,
- Very high accuracy capacitance and loss measurement bridges and high frequency radio frequency switches and relays in monitoring and control instruments with a maximum mercury content of 20 mg per bridge switch or relay.

In the light of those three formal proposals, the Union decided, by means of Council Decision (EU) 2022/549 adopted under Article 218(9) TFEU, to support a Decision at COP4.II amending Part I of Annex A to the Minamata Convention, which would:

- (i) be consistent with the Union formal proposal from 30 April 2021; or
- (ii) be consistent with the Union acquis; or
- (iii) cover MAPs that are neither regulated under EU law nor manufactured in the Union; or
- (iv) concern certain mercury-containing lamp categories referred to by the Africa Region in its formal amendment proposal.⁹

Parties adopted at COP4.II a Decision amending *inter alia* Part I of Annex A by adding the following eight new MAPs with 31 December 2025 as the applicable phase-out date (hereafter 'Minamata COP Decision'):¹⁰

- CFL.i \leq 30 watts with a mercury content not exceeding 5 mg per lamp burner;
- Cold cathode fluorescent lamps (CCFL) and external electrode fluorescent lamps (EEFL) of all lengths for electronic displays;
- Strain gauges to be used in plethysmographs;
- Melt pressure transducers, melt pressure transmitters and melt pressure sensors;
- Mercury vacuum pumps;
- Tire balancers and wheel weights;
- Photographic film and paper;
- Propellant for satellites and spacecraft.

⁹ Council Decision (EU) 2022/549 of 17 March 2022 on the position to be taken on behalf of the European Union at the second segment of the fourth meeting of the Conference of the Parties to the Minamata Convention on Mercury as regards the adoption of a Decision to amend Annexes A and B to that Convention (OJ L 107, 6.4.2022, p. 78).

¹⁰ Decision MC-4/3: *Review and amendment of annexes A and B to the Minamata Convention on Mercury*, 25 March 2022.

Considering that the scope of application of the Minamata COP Decision was in line with Council Decision (EU) 2022/549, the Union supported its adoption at COP4.II, within the meaning of Article 20 of the Mercury Regulation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Group of experts on Mercury (MEG) set up as an informal Commission Expert Group to assist *inter alia* in the preparation of delegated acts was consulted with no objections to the Delegated Act.

The general public was also consulted by means of the EU *Have your say* portal with limited feedback from the general public and other stakeholders. Feedback received, including from the European Environmental Bureau (EEB), related to the need for the EU to further restrict the use of mercury in products, beyond the scope of the Delegated Act.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

In accordance with Article 20 of the Mercury Regulation, the proposed Delegated Regulation aims at aligning the Mercury Regulation with the Minamata COP Decision MC-4/3: *Review and amendment of annexes A and B to the Minamata Convention on Mercury*. In this respect, it is however worth noticing as follows:

Firstly, strain gauges to be used in plethysmographs as one of the eight MAPs proposed by the Minamata COP Decision is already listed in Annex II (Part A) to the Mercury Regulation. Accordingly, there is no need for the proposed Delegated Act to provide for the transposition of this element of the Minamata COP Decision.

Secondly, whilst Annex A (Part I) to the Convention covers already CFL.i ≤ 30 watts with a mercury content exceeding 5 mg per lamp burner, the Minamata COP Decision extends the prohibition of import, export and manufacture to all CFL.i ≤ 30 watts irrespective of mercury content. Yet, considering that Annex II (Part A) to the Mercury Regulation is stricter than the Convention as it already prohibits the import, export and manufacture of CFL.i ≤ 30 watts with a mercury content exceeding 2,5 mg per lamp burner, the proposed Delegated Regulation refers to CFL.i ≤ 30 watts with a mercury content not exceeding 2,5 mg per lamp burner. In doing so, the proposed Delegated Regulation ensures that the same outcome is achieved under the Mercury Regulation than under the Convention, i.e. to ensure that all CFL.i for general lighting purposes Minamata ≤ 30 watts are prohibited from being imported, exported and manufactured by the applicable phase-out date.

Accordingly, Article 1 of this proposed Delegated Regulation provides for the following seven mercury-added products to be added to Part A of Annex II to the Mercury Regulation with 31 December 2025 as the phase-out date:

- Compact fluorescent lamps with an integrated ballast (CFL.i) for general lighting purposes that are ≤ 30 watts not exceeding 2,5 mg per lamp burner;
- Cold cathode fluorescent lamps (CCFL) and external electrode fluorescent lamps (EEFL) of all lengths for electronic displays;
- Melt pressure transducers, melt pressure transmitters and melt pressure sensors;
- Mercury vacuum pumps;

- Tire balancers and wheel weights;
- Photographic film and paper;
- Propellant for satellites and spacecraft.

In doing so, this proposed Delegated Act provides for the following four new entries of MAPs in Part A of Annex II to the Mercury Regulation:

- new entry 3bis for compact fluorescent lamps with an integrated ballast (CFL.i) for general lighting purposes that are ≤ 30 watts with a mercury content not exceeding 2,5 mg per lamp burner;
- new entry 6bis for cold cathode fluorescent lamps (CCFL) and external electrode fluorescent lamps (EEFL) of all lengths for electronic displays;
- new entry 10 (*electrical and electronic measuring devices*) for melt pressure transducers, melt pressure transmitters and melt pressure sensors;
- new entry 11 (*Other mercury-added products*) for mercury vacuum pumps, tire balancers and wheel weights, photographic film and paper and propellant for satellites and spacecraft.

The Commission is preparing a proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU) 2017/852 on mercury as regards dental amalgam and other mercury-added products subject to manufacturing, import and export restrictions. The Commission proposal will be adopted in parallel to this Delegated Act.

COMMISSION DELEGATED REGULATION (EU) .../...

of 14.7.2023

amending Regulation (EU) 2017/852 of the European Parliament and of the Council as regards mercury-added products subject to manufacturing, import and export prohibitions

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008¹, and in particular Article 20 thereof,

Whereas:

- (1) In accordance with Article 5 of Regulation (EU) 2017/852, the export, import and manufacturing in the Union of the mercury-added products set out in Annex II to that Regulation is to be prohibited as from the dates set out in that Annex, except those products that are essential for civil protection and military uses and those products for research, calibration of instrumentation, or for use as a reference standard.
- (2) The Minamata Convention on Mercury ('the Convention') was concluded by the Union by means of Council Decision (EU) 2017/939² and entered into force on 16 August 2017. Article 4(1) of the Convention prohibits the export, import and manufacturing of mercury-added products listed in Part I of Annex A to that Convention after the phase-out date specified for those products. Article 4(8) of the Convention requires the Conference of the Parties to the Convention ('COP') to review Annex A to the Convention no later than five years after the date of its entry into force.
- (3) The Union submitted proposals to amend Annexes A and B to the Convention by means of Council Decision (EU) 2021/727³. The COP, at its fourth meeting, held from

¹ OJ L 137, 24.5.2017, p. 1.

² Council Decision (EU) 2017/939 of 11 May 2017 on the conclusion on behalf of the European Union of the Minamata Convention on Mercury (OJ L 142, 2.6.2017, p. 4).

³ Council Decision (EU) 2021/727 of 29 April 2021 on the submission, on behalf of the European Union, of proposals to amend Annexes A and B to the Minamata Convention on Mercury, regarding mercury-added products and manufacturing processes in which mercury or mercury compounds are used (OJ L 155, 5.5.2021, p. 23).

21 to 25 March 2022, adopted Decision MC-4/3 amending Part I of Annex A to the Convention by including eight mercury-added products in that Annex. That Decision was supported by the Union by means of Council Decision (EU) 2022/549⁴.

- (4) Part A of Annex II to Regulation (EU) 2017/852 already lists strain gauges to be used in plethysmographs as one of the mercury-added products included in Part I of Annex A to the Convention by Decision MC-4/3 as well as compact fluorescent lamps with an integrated ballast (CFL.i) for general lighting purposes that are ≤ 30 watts with a mercury content exceeding 2,5 mg per lamp burner. As a result and in order to align Regulation (EU) 2017/852 with Decision MC-4/3, it is necessary to include seven mercury-added products in Part A of Annex II to that Regulation: (i) compact fluorescent lamps with an integrated ballast (CFL.i) for general lighting purposes that are ≤ 30 watts with a mercury content not exceeding 2,5 mg per lamp burner, (ii) cold cathode fluorescent lamps (CCFL) and external electrode fluorescent lamps (EEFL) of all lengths for electronic displays, (iii) melt pressure transducers, melt pressure transmitters and melt pressure sensors, (iv) mercury vacuum pumps, (v) tyre balancers and wheel weights, (vi) photographic film and paper and (vii) propellant for satellites and spacecraft.
- (5) Regulation (EU) 2017/852 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Annex II to Regulation (EU) 2017/852 is amended as set out in the Annex to this Regulation.

Article 2

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

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

Done at Brussels, 14.7.2023

For the Commission
The President
Ursula VON DER LEYEN

⁴ Council Decision (EU) 2022/549 of 17 March 2022 on the position to be taken on behalf of the European Union at the second segment of the fourth meeting of the Conference of the Parties to the Minamata Convention on Mercury as regards the adoption of a Decision to amend Annexes A and B to that Convention (OJ L 107, 6.4.2022, p. 78).