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PROPOSAL

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
date of receipt:	22 September 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2023) 542 final
Subject:	Proposal for a COUNCIL DECISION on the position to be taken on behalf of the European Union at the fifth 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

Delegations will find attached document COM(2023) 542 final.

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Brussels, 22.9.2023
COM(2023) 542 final

2023/0329 (NLE)

Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the fifth 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

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken, on the Union's behalf, at the fifth meeting of the Conference of the Parties to the Minamata Convention on Mercury ('the Agreement')[1] regarding the envisaged adoption of Decisions amending Annexes A and B to that Convention. These annexes establish lists of mercury-added products ('MAPs') and of manufacturing processes using mercury or mercury compounds ('mercury processes'), subject either to phase-out dates or to provisions regulating mercury use[2].

2. CONTEXT OF THE PROPOSAL

2.1. The Minamata Convention on Mercury ('the Agreement')

The Agreement is the main international legal framework aimed at protecting human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds to air, water and land. It addresses the whole life-cycle of mercury, from primary mercury mining to mercury waste disposal.

It entered into force on 16 August 2017.

The European Union ('the Union') is a party to the Agreement[3], as well as all its Member States.

Under the Agreement, MAPs are subject to the following two different types of restrictions depending on whether they are covered by Part I or II to Annex A to the Agreement[4]:

- The MAPs listed in Part I (e.g. certain compact fluorescent lamps) can no longer be manufactured, imported and exported after the phase-out dates specified therein, in accordance with Article 4, paragraph 1.
- The MAPs listed in Part II to Annex A are subject to the specific conditions and restrictions on mercury use established therein. By virtue of Article 4, paragraph 3, Parties[5] shall take the necessary measures to comply with those conditions and restrictions. To date, only dental amalgam is listed in Part II to Annex A.

Similarly, under the Agreement, mercury processes are also subject to two different types of restrictions depending on whether they are covered by Part I or II to Annex B:

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1 Text of the Minamata Convention available at: https://mercuryconvention.org/sites/default/files/2021-06/Minamata-Convention-booklet-rus-full.pdf

2 For the purpose of this document, the expression 'regulating mercury use' covers generically requirements such as those established in Parts II of Annexes A and B to the Minamata Convention on Mercury.

3 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).

4 References to articles and annexes in this document are references to articles and annexes to the Minamata Convention on Mercury, unless otherwise specified.

5 For the purpose of this document, 'Parties' means Parties to the Convention on Mercury.

– The mercury processes listed in Part I of Annex B (e.g. chlor-alkali production) must cease using mercury or mercury compounds by the phase-out dates set therein, in accordance with Article 5, paragraph, 2.

– The mercury processes listed in Part II to Annex B are subject to mercury use requirements (e.g. no use of mercury from primary mercury mining) established therein. In accordance with Article 5, paragraph 3, Parties shall take measures to comply with those conditions and requirements, including in terms of conversion to mercury-free processes when the Conference of the Parties to the Agreement ('COP') concludes on the availability of economically and technically feasible alternatives.

Pursuant to Article 4, paragraph 8, and Article 5, paragraph 10, Annexes A and B had to be reviewed by 16 August 2022. In doing so, the COP takes into account (i) the Parties' amendment proposals made under Article 4, paragraph 7, and Article 5, paragraph 9, (ii) the information transmitted by Parties on MAPs and processes and their alternatives by virtue of Articles 4, paragraph 4, and Article 5, paragraph 4, and (iii) the availability of technically and economically feasible mercury-free alternatives, while considering the environmental and human health risks and benefits.

2.2. The Conference of the Parties ('COP')

The COP performs the functions assigned to it by the Agreement. To that end, it shall consider and undertake *inter alia* any action that may be required for achieving the objectives of the Agreement.

According to Article 28 of the Agreement and Decision MC-1/1 on Rules of Procedure[6] adopted by the COP at its first meeting (24-29 September 2017)[7], each Party has one vote. However, the Union, as a regional economic integration organisation, exercises its right to vote, on matters within its competence, with a number of votes equal to the number of its Member States that are parties to the Agreement. The Union shall not exercise its right to vote if any of its Member States exercises its right to vote, and vice versa.

2.3. The envisaged acts of the Conference of the Parties

For the purpose of launching a process for reviewing Annexes A and B, the COP adopted, at its third meeting (25-29 November 2019), Decision MC-3/1[8] establishing an ad-hoc group of technical experts to proceed with discussions on MAPs and mercury processes during the intersessional period leading to its fourth meeting ('COP4'). The mandate of this group called

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6 Decision adopted by the first Conference of the Parties to the Minamata Convention on Mercury - MC-1/1: Rules of procedure, 22 November 2017, https://mercuryconvention.org/sites/default/files/documents/decision/UNEP-MC-COP1-Dec1-RulesProcedure.EN.pdf

7 First meeting of the Conference of the Parties to the Minamata Convention on Mercury (COP-2), Geneva, Switzerland, 24 – 29 September 2017, https://mercuryconvention.org/en/meetings/cop1

8 Decision adopted by the third Conference of the Parties to the Minamata Convention on Mercury - MC-3/1 *Review of annexes A and B,* UNEP/MC/COP3/Dec. 1, available at: http://www.mercuryconvention.org/Meetings/COP3/Decisions/tabid/8654/language/en-US/Default.aspx

in particular for improving and organising the information submitted by the Parties in accordance with Article 4, paragraphs 4 and 7, and Article 5, paragraphs 4 and 9. Based on the outcome of this expert work and on the submissions made by Parties[9], including the submissions from the European Union[10] ahead of COP4 (21-25 March 2022), the COP adopted Decision MC-4/3[11].

Paragraph 5 of Decision MC-4/3

Parties agreed to add in Part I to Annex A four additional MAPs (see left column in below table). However, as they could not reach consensus at COP4 on associated phase-out dates, Parties decided, as reflected in paragraph 5 of Decision MC-4/3, to defer the discussion on such dates at the fifth meeting of the COP ('COP5') on the basis of proposed bracketed dates (see right column in below table).

Mercury-added products	***Date after which the manufacture, import or export of the product shall not be allowed (phase-out date)***
Button zinc silver oxide batteries with a mercury content < 2% and button zinc air batteries with a mercury content < 2%	[2025] [2029]
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 [except those used for research and development purposes]	[2025]
Linear fluorescent lamps (LFLs) for general lighting purposes: (a) Halophosphate phosphor ≤ 40 watts with a mercury content not exceeding 10 mg per lamp (b) Halophosphate phosphor ≥ 40 watts	[2025] [2027] [2030]
Linear fluorescent lamps (LFLs) for general lighting purposes: (a) Triband phosphor < 60 watts with a mercury content not exceeding 5 mg/lamp	[2027] [2030]

Paragraph 6 of Decision MC-4/3

[9] Proposals by the Africa Region, Canada and Norway to amend Parts I and II of Annex A to the Minamata Convention on Mercury, available at: https://mercuryconvention.org/en/meetings/cop4#cop-documents

[10] UNEP/MC/COP.4/26/Add1 Proposal by the European Union to amend Part I and II of Annex A and Part I of Annex B to the Minamata Convention on Mercury, available at: https://mercuryconvention.org/en/documents/proposal-european-union-amend-part-i-annex-part-ii-annex-and-part-i-annex-b-minamata

[11] Decision adopted by the fourth Conference of the Parties to the Minamata Convention on Mercury MC-4/3 *Review and amendments of annexes A and B,* UNEP/MC/COP4/Dec. 3, available at: https://mercuryconvention.org/sites/default/files/documents/decision/4_Dec3_Amendment.English.pdf

Regarding mercury processes, Parties decided also to consider at COP5 to add the production of polyurethane using mercury-containing catalysts to Part I of Annex B, as a process that must cease at a given phase-out date.

In addition to above-mentioned paragraphs 5 and 6 of Decision MC-4/3, in negotiating and developing the envisaged acts, Parties will also have to consider at COP5 the submission made by the Africa Region ahead of that meeting, in accordance with Article 4, paragraph 7[12]. This submission proposes below further amendments to Parts I and II to Annex A.

2.4. Africa Region submission

Proposed amendments to Part I to Annex A

The Africa Region proposes to add to Part I of Annex A the following six product categories together with associated phase-out dates.

Mercury-added products	***Date after which the manufacture, import or export of the product shall not be allowed (phase-out date)***
Cosmetics, including skin lightening soaps and creams, and not including eye are cosmetics where mercury is used as a preservative and no effective and safe substitute preservatives are available	2025
Dental amalgam	2030
Compact fluorescent lamps (CFLs) for general lighting purposes that are > 30 watts	2025
Compact fluorescent lamps with a non-integrated ballast (CFL.ni) for general lighting purposes that are ≤ 30 watts with a mercury content not exceeding 5 mg per lamp burner	2025
Linear fluorescent lamps (LFLs) for general lighting purposes: (b) Triband phosphor ≥ 60 watts	2026
Non-linear fluorescent lamps (NFLs) (e.g., U-bend and circular) for general lighting purposes: (a) Triband phosphor, all wattages (b) Halophosphate phosphor, all wattages	2026

Proposed amendments to Part II to Annex A

The Africa Region proposes also to add to Part II of Annex A (i) one new MAP category, i.e. cosmetics together with trade restrictions and (ii) additional requirements concerning dental amalgam.

[12] Proposal by the Africa Region to amend Parts I and II to Annex A, available at: https://mercuryconvention.org/en/meetings/cop5

Mercury-added products	*Provisions*
Cosmetics, including skin lightening soaps and creams, and not including eye are cosmetics where mercury is used as a preservative and no effective and safe substitute preservatives are available	Measures to be taken by a Party to phase out the sale and offering of sale of mercury-added cosmetics from both local markets and online platforms shall include: i. Setting national objectives to phase out sale and offering of sales including, but not limited to carrying out two or more of the following: a. Developing and implementing strategies to discourage marketing, advertising and display b. Developing and publicising advisories, detention and prohibited substances lists of mercury-added cosmetics c. Licensing and product ingredient approvals for manufacturing facilities for cosmetics and beauty products d. Engaging online platforms in developing and implementing product safety pledges ii. Coordinating and collaborating on phase out initiatives inter-ministerially and bilaterally and/or regionally. iii. Raising public awareness about the hazards of SLPs use among physicians, dermatologists and beauty centres, as well as consumers and family members
Dental amalgam	Additional provisions for dental amalgam shall include: i. Submitting to the Secretariat a national plan concerning the measures Parties intend to implement to phase out the use of dental amalgam ii. Excluding or not allowing, by taking measures as appropriate, the use of dental amalgam in government insurance policies and programmes

3. POSITION TO BE TAKEN ON THE UNION'S BEHALF

The objective of the Union is to phase-out mercury use at Union and global level, as rapidly and as completely as possible, where viable alternatives exist.[13] The achievement of this objective requires notably the phasing-out of MAPs and the conversion of mercury processes to non-mercury processes, when available economically and technically feasible alternatives exist providing benefits to human health and the environment.

Progress at global level towards this objective would contribute to the Zero Pollution ambition for a toxic-free environment set-out in the European Green Deal[14]. It would also contribute to implementing the 2020 EU Chemical Strategy for Sustainability[15] in which the European

[13] See Council Conclusions 'Review of the Community Strategy concerning Mercury', 14 March 2011

[14] Communication from the Commission of 11.12.219, *The European Green Deal*, COM(2019) 640 final.

[15] Communication of the Commission '*Chemicals Strategy for Sustainability Towards a Toxic-Free Environment*' (COM(2020) 667 final, of 14.10.2020.

Commission has committed to maintain a leading role at international level concerning the sound management of chemicals.

Amendment of Annex A to the Agreement setting the list of mercury-added products subject to a manufacturing, import and export ban or to requirements on mercury use.

The position to be taken on the Union's behalf is based upon the following elements:

- Annex II to Regulation (EU) 2017/852 on Mercury ('Mercury Regulation')[16], which has transposed Annex A (Part I) to the Agreement, has a broader scope of application than the Agreement, as it covers more MAPs (e.g., button cell batteries).

- The Union submission (March 2020), transmitted in accordance with Decision MC-3/1[17], identified a number of other MAPs for which feasible and beneficial mercury-free alternatives are available, including products which are already prohibited from being placed on the internal market and imported[18/19], e.g. in accordance with Directive 2011/65/EU ('RoHS')[20] and Regulation (EC) No 1907/2006 ('REACH')[21], but which are not yet subject to a manufacturing and export prohibition.

- Commission Delegated Regulation (EU) .../... of 14 July 2023 amending Regulation (EU) 2017/852 (C(2023)4683 final)[22] which transposed Decision MC-4/3 in accordance with Article 20 of the Mercury Regulation.

The MAPs contained in the proposal by the Africa Region concerning amendments to Part I of Annex A are either consistent with the Union acquis e.g., the requests for renewal of the exemptions on mercury-containing lamps have been rejected, in accordance with the RoHS Directive; or concern the phase-out of MAPs, which are subject to on-going legislative developments aimed at setting a similar ban at Union level.

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16 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 (OJ L 137, 24.05.2017, p. 1).

17 *Submission from the EU on mercury-added products and manufacturing processes using mercury or mercury compounds* (March 2020), available at: http://www.mercuryconvention.org/Portals/11/documents/meetings/COP4/submissions/EU_AnnexAB.pdf

18 The notion of 'placing on the internal market' includes 'import' under EU legislation regulating the placing on the market of mercury-added products.

19 The full list of relevant EU law is available in the Commission Staff Working Document Impact Assessment '*Ratification and Implementation by the EU of the Minamata Convention on Mercury Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008'* (SWD/2016/017 final, of 2.2.2016).

20 Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (OJ L 174, 01.07.2011, p. 88).

21 Regulation No 1907/2006 of the European Parliament and of the Council of 18 December 2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396 of 30.12.2006, p. 1).

22 Commission Delegated Regulation (EU) .../... of 14 July 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 (C(2023)4683 final).

Regarding other parts of the propsal by the Africa Region concerning amendments to Part II of Annex A, certain provisions are consistent with the Union acquis, including:

- National plans concerning the measures Parties intend to implement to phase out the use of dental amalgam (Mercury Regulation, Article 10(3))
- Setting national objectives to phase out sale and offering of sales of cosmetics including, but not limited to carrying out two or more of the following:
    - Developing and implementing strategies to discourage marketing, advertising and display
    - Engaging online platforms in developing and implementing product safety pledges

However, other provisions are not covered by the Union acquis, including:

- Excluding or not allowing, by taking measures as appropriate, the use of dental amalgam in government insurance policies and programs
- For cosmetics:
    - Coordinating and collaborating on phase out initiatives inter-ministerially and bilaterally and/or regionally
    - Raising public awareness about the hazards of SLPs use among physicians, dermatologists and beauty centres, as well as consumers and family members

These provisions do not have legal effect to the Union acquis. For example, according to Mercury Regulation Article 19(b) competence in organizing and delivering health services and medical care is Member State competence. They are therefore not subject to this proposed Council Decision.

Accordingly, the amendment of Annex A provides several opportunities to reduce further mercury use and associated pollution worldwide:

(1) To narrow the gap between the existing, more advanced Union law and the Agreement by adding, to Part I of its Annex A, products already listed in Annex II to the Union Mercury Regulation.

(2) To add in Part I of Annex A to the Agreement products that are not yet subject to a ban on manufacturing and export under the Union Mercury Regulation but are nonetheless either no longer allowed to be placed on the Union market or subject to on-going legislative developments aimed at setting a similar ban at Union level.

Hence, the position to be taken on the Union's behalf at COP5 shall consist in supporting the adoption of acts aimed to extend the scope of application of Annex A to the Agreement to MAPs that are already prohibited from being manufactured and traded in accordance with Annex II to the Union Mercury Regulation, or are already banned from being placed on the

Union market, or are subject to on-going legislative developments aimed at setting a similar ban at Union level, and that can be replaced with mercury-free alternatives proven to be economically and technically feasible as well as beneficial from an environmental and human health perspective.

Amendment of Annex B to the Agreement setting the list of mercury processes subject to a 'phase-out' date or to requirements on mercury use.

The position to be taken on the Union's behalf is based upon the following elements:

Union law, in particular Article 7, paragraphs 1 and 3, and Annex III to the Mercury Regulation have transposed Article 5, paragraphs 2 and 3, and Annex B, to the Agreement, in a stricter manner.

Firstly, whilst Annex B to the Agreement covers five specific mercury processes (production of chlor-alkali, acetaldehyde, vinyl chloride monomer ('VCM'), alcoholates and polyurethane), Annex III to the Mercury Regulation contains a catch-all provision prohibiting, at specified phase-out dates, the use of mercury or mercury compounds in all manufacturing processes in the Union, i.e. when used as a catalyst (1 January 2018) or as an electrode (1 January 2022). The scope of application of this prohibition is thus open-ended under Union law.

Secondly, although Annex III to the Mercury Regulation sets a derogating phase-out date for alcoholates production, this provision is stricter in comparison with Annex B to the Agreement. Whereas the Mercury Regulation prohibits mercury use as *catalyst for polyurethane production* since 1 January 2018, the Agreement sets only a restriction on mercury use and specifies that the Parties either 'aim at' phasing-out this use by 16 August 2027 (polyurethane) or phase-out such use five years after the COP has determined that mercury-free alternatives have become technically and economically feasible (VCM and alcoholates).

The amendment of Annex B provides an opportunity to reduce the industrial use of mercury. This can be achieved by narrowing the gap between existing, more advanced Union law and the Agreement by adding to Part I of Annex B to the Agreement, phase-out dates for polyurethane production using mercury, in consistency with the Union *acquis* and considering existing available technically and economically feasible mercury-free alternatives processes, as reported in the March 2020 Union submission under Decision MC-3/1.

Hence, the position to be taken on the Union's behalf at COP5 should consist in supporting the adoption of acts aimed to introduce a phase-out date for the production of polyurethane using mercury.

4. LEGAL BASIS

4.1. 4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) regulates decisions establishing '*the positions to be adopted on the Union's behalf in a body set up by*

an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement.'

The concept of '*acts having legal effects*' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law, but that are '*capable of decisively influencing the content of the legislation adopted by the EU legislature*'[23].

4.1.2. Application to the present case

The COP is a body set up by an agreement, namely the Minamata Convention on Mercury.

The acts which the COP is called upon to adopt constitute acts having legal effects, because the Parties to the Agreement would have to take measures to ensure that they are implemented and complied with.

The envisaged acts do not supplement or amend the institutional framework of the Agreement.

Therefore, the procedural legal basis for the proposed decision is Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

The substantive legal basis for a decision under Article 218(9) TFEU depends primarily on the objective and content of the envisaged act in respect of which a position is taken on the Union's behalf. If the envisaged act pursues two aims or has two components and if one of those aims or components is identifiable as the main one, whereas the other is merely incidental, the decision under Article 218(9) TFEU must be founded on a single substantive legal basis, namely that required by the main or predominant aim or component.

4.2.2. Application to the present case

The main objective and content of the envisaged acts relate to the protection of the environment and human health.

Thus, the substantive legal basis of the proposed decision is Article 192(1) TFEU.

4.3. Conclusion

The legal basis of the proposed decision should be Article 192(1) TFEU, in conjunction with Article 218(9) TFEU.

[23] Judgment of the Court of Justice of 7 October 2014, Germany v Council, C-399/12, ECLI:EU:C:2014:2258, paragraphs 61 to 64.

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) in conjunction with Article 218(9) thereof,

Having regard to the proposal from the European Commission,

Whereas:

(1) The Minamata Convention on Mercury (the 'Agreement') was concluded by the Union by Council Decision (EU) 2017/939[24] and entered into force on 16 August 2017.

(2) Pursuant to Decision MC-1/1 on Rules of Procedure, adopted by the Conference of the Parties to the Agreement ('COP') at its first meeting, the Parties to the Agreement (the 'Parties') should make every effort to reach agreement on all matters of substance by consensus.

(3) Pursuant to Articles 4(8) and 5(10) of the Agreement, the COP should, by 16 August 2022, review Annexes A and B to the Agreement, and may consider amendments to those Annexes, taking into account proposals submitted by the Parties pursuant to Articles 4(7) and 5(9) of the Agreement, information made available by the Secretariat of the Agreement pursuant to Articles 4(4) and 5(4) of the Agreement, and the availability of technically and economically feasible mercury-free alternatives taking account of associated environmental and human health risks and benefits.

(4) On 30 April 2021, the Union submitted to the Secretariat of the Agreement a proposal[25] to amend Annexes A and B to the Agreement, in accordance with Articles 4(7) and 5(9) of that Agreement. The Union's proposal to amend Annex A to the Agreement aimed to extend its scope of application to additional mercury-added products with associated phase-out dates or mercury-regulating measures. The Union's

[24] 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).

[25] 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).

proposal to amend Annex B to the Agreement aimed to introduce a phase-out date for the production of polyurethane using mercury-containing catalyst.

(5) At the second segment of its fourth meeting, the COP decided in its Decision MC-4/3[26] to include eight new mercury-added products in its Annex A (Part I).

(6) However, for four mercury-added products no agreement was reached on phase-out dates. Decision MC-4/3 deferred the decision on those phase-out dates to the fifth meeting of the Conference of the Parties (31 October to 3 November).

(7) Decision MC-4/3 also deferred the decision on adding the production of polyurethane using mercury-containing catalysts to Part I of Annex B to the fifth meeting of the COP.

(8) A new proposal for amending Annex A to the Agreement has been submitted by the Africa Region in accordance with Article 4(7) of the Agreement. The proposal concerns cosmetics, dental amalgam, and mercury-containing lamps and proposes new text for Parts I and II to Annex A.

(9) The Union should support amendments to Annexes A and B to the Agreement in so far as they would be consistent with the Union's submission[27], with the Union acquis or with EU policy.

(10) To the extent that they are referred to in the submission by the Africa Region, the Union should support amendments to Annex A to the Agreement in so far as they cover lamps, cosmetics and dental amalgam.

(11) At the fifth meeting of the COP, the Parties will consider the adoption of a Decision to amend Annex A to the Agreement.

(12) It is appropriate to establish the position to be taken, on behalf of the Union, at the fifth meeting of the COP, as the proposed Decision, if adopted, will have legal effects, since the Parties will have to take measures to implement it at national or regional levels, or both.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken, on behalf of the Union, at the fifth meeting of the COP to the Agreement shall be to support the adoption of a Decision to amend Annex A thereof, which:

— is consistent with the Union acquis; or

— is consistent with Council Decision (EU) 2021/727 of 29 April 2021; or

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

[27] 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).

— aims to support a phase-out of mercury-containing lamp categories referred to by the Africa Region in its submission made in accordance with Article 4(7) of the Agreement, and for which the requests for renewal of the exemptions on mercury use have been rejected, in accordance with Directive 2011/65/EU; or

— aims to support a phase-out of the use of dental amalgam.

Article 2

Refinement of the position referred to in Article 1 may be agreed to, in the light of developments at the fifth meeting of the COP, by the representatives of the Union, in consultation with Member States during on-the-spot coordination meetings, without a further decision of the Council.

Article 3

This Decision is addressed to the Commission.

Done at Brussels,

For the Council
The President