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From: Secretary-General of the European Commission, signed by Ms Martine
DEPREZ, Director

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To: Ms Thérèse BLANCHET, Secretary-General of the Council of the
European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 17.12.2025
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(2025) 8844 final.

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

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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 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.

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 concerned Minamata COP decision 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 151 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 into 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 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 fourth and fifth meetings of the Minamata COP (COP4 from 21-25 March 2022 and COP5 from 30 October to 3 November 2023).

In this respect, 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

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).

Convention. The Union then communicated on 30 April 2021 to the Secretariat a formal proposal for amending *inter alia* Part I of Annex A to the Minamata Convention, in line with Article 4(7) of that Convention⁸. Additionally, two other formal proposals for amending Part I of Annex A were made by (i) the African Region and (ii) Switzerland/Canada.

In the light of those three formal proposals, the Union decided, by means of Council Decision (EU) 2022/549⁹ and Council Decision (2023/2417)¹⁰ adopted under Article 218(9) TFEU, to support a Decision at COP4 and COP5 amending Part I of Annex A to the Minamata Convention.

Parties adopted at COP4 a Decision¹¹ amending *inter alia* Part I of Annex A by adding eight new MAPs with 31 December 2025 as the applicable phase-out date.

However, four new entries on MAPs (and their respective phase-out dates) were deferred to COP5 as no agreement could be reached on their respective phase-out dates. These include “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” (hereafter, ‘specific switches and relays’).

Parties were able to reach agreement at COP5 that led to the adoption of a Decision¹² adding five mercury-containing lamp categories as well as batteries, “specific switches and relays” and cosmetics to Part I of Annex A to the Minamata Convention including applicable phase-out dates.

During the revision of the Mercury Regulation¹³, this Decision was transposed into Annex II to the Mercury Regulation, except for “specific switches and relays” as these were still covered by an exemption under Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (hereafter, ‘RoHS Directive’¹⁴, and the deadline prescribed under Part I of Annex A (entry on switches and relays) of the Convention was 31 December 2025.

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).

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, 06/04/2022, p. 78–79.

¹⁰ Council Decision (EU) 2023/2417 of 23 October 2023 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, OJ L, 2023/2417, 6.11.2023.

¹¹ Decision MC-4/3: *Review and amendment of annexes A and B to the Minamata Convention on Mercury*, 25 March 2022.

¹² Decision MC-5/4: *Amendments to annexes A and B and the feasibility of mercury-free alternatives for manufacturing processes listed in annex B*, 23 November 2023.

¹³ Regulation (EU) 2024/1849 of the European Parliament and of the Council of 13 June 2024 amending Regulation (EU) 2017/852 on mercury as regards dental amalgam and other mercury-added products subject to export, import and manufacturing restrictions (OJ L, 2024/1849, 10.7.2024).

¹⁴ 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, 1.7.2011).

However, the applicable exemptions under the RoHS Directive (exemption 16 in Annex IV) have expired. With the expiry of these exemptions, these “specific switches and relays” are now prohibited from being placed on the market in accordance with the RoHS Directive. As the placing on the market does not cover the manufacture and export of MAPs, adding them to Annex II of the Mercury Regulation ensures complementarity between the Mercury Regulation and the RoHS Directive as well as correct transposition of the Minamata Convention into EU law, covering manufacture, import and export.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The Group of experts on Mercury set up as an informal Commission Expert Group to assist *inter alia* in the preparation of delegated acts was consulted in writing on the text from 24 to 28 November and no comments were received thereby not necessitating any changes to the Delegated Act.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

In accordance with Article 20 of the Mercury Regulation, the 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*.

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

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

In doing so, this Delegated Regulation provides for the following entry of MAPs in Part A of Annex II to the Mercury Regulation:

- new entry 2a for 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

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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 prohibited as from the dates set out in that Annex. The prohibition does not apply to products that are essential for civil protection and military uses and 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 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 COP, at its fifth meeting, held from 30 October to 3 November 2023, adopted Decision MC-5/4³ amending Part I of Annex A to the Convention by including five mercury-containing lamp categories as well as batteries, very high accuracy capacitance and loss measurement bridges and high frequency radio frequency

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 Decision MC-5/4: *Amendments to annexes A and B and the feasibility of mercury-free alternatives for manufacturing processes listed in annex B*, 23 November 2023.

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, and cosmetics to that Annex, and specifying applicable phase-out dates. That Decision was supported by the Union by means of Council Decisions (EU) 2022/549⁴ and (EU) 2023/2417⁵.

- (4) In order to align Regulation (EU) 2017/852 with Decision MC-5/4, it is necessary to include the following mercury-added products in Part A of Annex II to that Regulation: 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.
- (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 third 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, 17.12.2025

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, ELI: <http://data.europa.eu/eli/dec/2022/549/oj>).

⁵ Council Decision (EU) 2023/2417 of 23 October 2023 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 (OJ L, 2023/2417, 6.11.2023, ELI: <http://data.europa.eu/eli/dec/2023/2417/oj>).