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Subject:	Proposal for a Regulation of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008 - Comments from delegations

Delegations will find in the Annex comments on the abovementioned proposal received from FR, LT and UK.

ANNEX

FRANCE

Dans le cadre des discussions actuelles relatives à la proposition de règlement mercure cité en objet et visant notamment de permettre à l'Union européenne de ratifier la Convention de Minamata, la Présidence néerlandaise a demandé aux Etats membres de lui fournir des commentaires sur l'article 10 relatif aux amalgames dentaires et sur le chapitre IV relatif au stockage et l'élimination de déchets de mercure.

La présente note fournit les commentaires des autorités françaises sur le chapitre V relatif au stockage et l'élimination de déchets de mercure du projet de règlement, ainsi que des questions supplémentaires relatives à l'article 5 et l'annexe II relatives aux produits contenant du mercure ajouté. Les commentaires sur l'article 10 relatif aux amalgames dentaires seront envoyés postérieurement.

La présente note ne préjuge pas d'éventuels commentaires supplémentaires qui pourraient être développés par la suite sur ces aspects ou sur les autres parties de ce projet de règlement.

Commentaires relatifs au chapitre 4 sur le stockage et l'élimination des déchets

Les échanges lors du dernier groupe de travail qui s'est déroulé à Bruxelles le 21 mars 2016, ont montré que l'articulation des articles 11 et 13 avec la définition proposée dans l'article 2 est source de confusion dans la rédaction actuelle du texte.

Suite aux explications apportées par la Commission lors de cette réunion, les autorités françaises comprennent que:

- l'article 2 propose une définition générale des déchets de mercure en lien avec la directive 2008/98/EC ;

- l'article 11 vient préciser certaines sources de mercure qui doivent être obligatoirement considérées comme des déchets de mercure, donc pour lesquelles aucun recyclage ou réutilisation ne doit être envisagés;

- l'article 13 traite du stockage des déchets de mercure, c'est à dire de ceux définis par l'article 11 mais aussi plus largement de ceux qui tombent sous la définition générale apportée dans le cadre de l'article 2.

Les autorités françaises souhaiteraient qu'il leur soit confirmé que l'interprétation présentée ci-dessus est correcte, et qu'elles ne font donc pas d'erreur sur la lecture de ce projet de règlement.

Dans cette hypothèse, les autorités françaises considèrent qu'il s'avère nécessaire de clarifier la rédaction de l'article 11 qui en l'état pourrait sous-entendre que les seules sources de mercure listées doivent être considérées comme déchets de mercure, ce qui serait en contradiction avec la directive de 2008/98/CE et la définition proposée à l'article 2. En ce sens, elles proposent les modifications suivantes pour cet article:

"*Sans préjudice* ***de la directive 2008/98/CE*** ~~*de la décision 2000/532/CE de la Commission*~~*, sont considérés comme des déchets et éliminés sans mettre en danger la santé humaine et sans nuire à l'environnement,* ~~*conformément à la directive 2008/98/CE,*~~ ***notamment*** *les produits suivants:*"

Il est à noter que dans les commentaires exprimés lors du groupe de travail du 21 mars 2016, les autorités françaises avaient exprimées des craintes quant à la suppression de la référence à la décision 2000/532/CE. L'analyse exprimée sur ce point par le service juridique du Conseil apparaissant rassurante, les autorités françaises ne s'opposeraient pas à cette suppression si le texte actuel était clarifié et la référence à la directive de 2008/98/CE maintenue.

Au sujet de la définition proposée à l'article 2 du projet de règlement les autorités françaises considèrent que l'inclusion des composés du mercure souhaitée par d'autres Etats membres serait profitable au texte. La définition pourrait ainsi être rédigée de la manière suivante:

"«déchet de mercure»: le mercure et composés du mercure qui relèvent de la catégorie des déchets tels que définis à l'article 3, paragraphe 1, de la directive 2008/98/CE du Parlement européen et du Conseil"

L'article 13 permet en pratique le stockage permanent de mercure métallique sous forme liquide dans des mines de sel ou des formations rocheuses, sous certaines conditions par dérogation à la directive 1999/31/CE concernant la mise en décharge des déchets. Les autorités françaises sont opposées à cette approche et considèrent comme d'autres Etats, que le stockage permanent de déchets de mercure ne devrait être autorisé qu'après stabilisation.

Il est important de rappeler que dans le cadre des travaux relatifs à la Convention de Bale, des lignes directrices sur la gestion écologiquement rationnelle des déchets consistant, contenant ou contaminés par du mercure ont été adoptées en 2015. Ce document qui a reçu l'aval des Parties à la Convention et donc de l'UE et de ses Etats membres, préconise une stabilisation ou solidification de ces déchets de mercure avant tout stockage permanent en sous-sol. De fait, il ne parait ni pertinent ni raisonnable de s'écarter de ces recommandations considérées au niveau international comme des bonnes pratiques pour la protection de l'environnement. En effet, de manière générale, la stabilisation du mercure permet de diminuer la dangerosité du déchet avant stockage, de limiter au maximum la dispersion du mercure et donc d'assurer la sécurité à long terme d'un stockage, en profondeur ou en surface.

Ce processus de stabilisation est d'autant plus important que l'on manque actuellement de données quant au comportement du mercure métallique dans le sel (facilité de diffusion, corrosion, formation d'amalgames avec différentes espèces...), et que la stabilité des mines dans le temps peut évoluer.

Au sujet de ce dernier point les autorités françaises notent que le projet de règlement reste relativement succinct sur les conditions de stockage. Il est simplement fait référence, de manière peu précise, à certains points des annexes de la directive 1999/31. Il serait utile d'étudier la possibilité de préciser des dispositions en particulier en ce qui concerne la typologie des mines de sels (stabilité, compacité, absence de contact avec les eaux souterraines et superficielles,...) et de s'assurer que l'application des préconisations déjà définies pour le stockage temporaire est suffisante pour assurer que le stockage permanent soit effectué d'une manière écologiquement rationnelle.

Pour les autorités françaises, un centre de stockage permanent doit absolument demeurer une solution réversible pendant une durée déterminée, en cas de possibilités ultérieures de valorisation des déchets, d'obligation de déstockage pour non-conformité des déchets acceptés, ou d'obligation réglementaire de limiter la durée du stockage. Un tel stockage permanent de mercure métallique sous forme liquide dans des mines de sel ou des formations rocheuses, tel que proposé, semble difficilement compatible avec cet objectif général.

Questions relatives à l'article 5 et l'annexe II relatives aux produits contenant du mercure ajouté. – articulation avec les dispositions de la directive RoHS

Le mercure, lorsqu'il est associé au tellure et au cadmium, comporte des propriétés qui lui confèrent un usage particulier dans le domaine de l'optronique. Si des détecteurs infrarouges fabriqués avec cet alliage contenant du mercure sont essentiels pour le domaine militaire, l'usage de ces détecteurs ne se limite pas à ce domaine et s'étend au domaine spatial civil.

L'annexe IV point 1c de la directive RoHS exempte les détecteurs infrarouges contenant du mercure, du cadmium et du plomb de l'interdiction de mise sur le marché prévue par l'article 4 paragraphe 1 de cette directive.

Les autorités françaises souhaiteraient sécuriser juridiquement l'utilisation de ces détecteurs dans la mesure où la sécurité en approvisionnement de ce type d'équipements pour le domaine militaire dépend du marché civil. L'utilisation pour le domaine spatial civil ne semble pas non plus bénéficier de technologies de substitution.

Or, l'annexe II partie A de la proposition de règlement relatif au mercure, qui ne contient pas à ce stade les détecteurs infrarouges, est susceptible d'évoluer à la suite de modifications de l'annexe A première partie de la convention de Minamata.

De ce fait, les autorités françaises souhaiteraient savoir si un détecteur infrarouge peut être considéré comme un instrument de mesure auquel l'annexe II partie B de la présente proposition de règlement fait référence et qui exclut certains produits de la liste figurant dans la partie A de cette annexe. Même en cas de réponse positive, les autorités françaises craignent que les dispositions actuelles de l'annexe II partie B permettent de remettre en cause l'exemption prévue par la directive RoHS concernant les détecteurs infrarouges. De ce fait, elles se réservent la possibilité de demander des modifications rédactionnelles sur cette partie de la proposition.

Traduction de courtoisie

"This is a courtesy translation and in the event there are any differences between the French and English texts, the French text governs"

Within the current discussions related to the Commission draft regulation on mercury, aiming especially at allowing the ratification of the Minamata Convention by the European Union, the Dutch Presidency asked the Member States to provide written comments with a particular focus on article 10 regarding dental amalgams and on chapter IV regarding the storage and disposal of mercury waste.

This note presents comments from the French authorities on chapter IV regarding the storage and disposal of mercury waste and also additional questions on article 5 and annex II concerning mercury added products.

[Comments on article 10 on dental amalgam are being finalised at national level and will be shortly sent to the Presidency]

Potential additional comments may be developed and sent at a later stage on these issues or other parts of this draft regulation.

Comments on chapter IV: storage and disposal of mercury waste

Discussions during the last Council working group that took place on March 21st, 2016, showed that the current wording creates confusion regarding the articulation between article 11, article 13 and the definition provided in article 2.

After considering the explanation provided by the Commission during this session of the working group, the French authorities' understanding about these provisions is the following:

- Article 2 provides a general definition in line with directive 2008/98/EC,
- Article 11 specifies some sources of mercury that must be considered as mercury waste : thus recycling or reuse aren't available options for those mercury sources,
- Article 13 deals with disposal of mercury waste, meaning waste defined in article 11 but also and more broadly, waste falling under the general definition provided in article 2.

The French authorities kindly ask for a confirmation that their interpretation, as presented above, is actually correct and that they are not mistaken when reading this draft regulation.

In this case, the French authorities consider necessary to bring clarification to the proposed wording of article 11 because as it stands now, it could be interpreted in a way that only the mercury sources listed here are to be considered as mercury waste, which would be contradictory to the provisions of directive 2008/98/EC and the definition provided in article 2. To this end they propose to consider the following amendments for this article:

«Without prejudice **to Directive 2008/98/EC** ~~to Commission Decision 2000/532/EC~~ , the following shall, **in particular**, be considered as waste and be disposed of without endangering human health or harming the environment in accordance with Directive 2008/98/EC:

To be noted: during the march 21 session of the working group, the French authorities expressed concerns regarding the deletion of the reference to decision 2000/532/EC. The Council legal service analysis on this being reassuring, the French authorities would not oppose this deletion if the current text is clarified and the reference to the 2008 directive maintained.

Regarding the definition provided in article 2, the French authorities consider that including the mercury compounds, as requested by other Member States would be beneficial to the text. The definition could then read as follows:

'mercury waste' means mercury **and mercury compounds** that qualifies as waste, in accordance with Article 3(1), of Directive 2008/98/EC of the European Parliament and of the Council

In practice, article 13 make the permanent storage of liquid mercury waste in salt mines or rock formations possible under certain circumstances by way of derogation from Directive 1999/31/EC on the landfill of waste. The French authorities are against this approach and, similarly to other Member States, consider that the permanent storage of mercury waste should only be authorised after its stabilization.

It is important to recall that, in the context of the Basel Convention, guidelines for the environmentally sound management of wastes consisting of elemental mercury and wastes containing or contaminated with mercury were adopted in 2015. This document, agreed upon by the Parties to the Convention, and among them the EU and its Member States, recommends mercury waste to be stabilized or solidified before its permanent underground disposal. Against this background, it would not be relevant nor responsible to diverge from these recommendations recognised at the international level as good practices to ensure the protection of the environment. As a matter of fact, mercury stabilization generally lowers waste hazardousness before storage, limits as much as possible mercury dispersion and thus ensures long term security of both on land and underground storage.

This stabilization process is all the more important that there is a lack of data on the behavior of mercury in salt (diffusion, corrosion, amalgam creations...), and that mines stability can evolve in time.

Regarding this last issue, the French authorities note that the draft regulation is relatively brief about storage conditions. It simply makes reference to some provisions of Directive 1999/31 that are not really precise. It would be useful to study the possibility to specify those provisions particularly concerning the type of salt mines (stability, compacity, absence of contact with surface and underground waters) and to ensure that the provisions already defined for temporary storage are sufficient enough to ensure that permanent storage is conducted in an ecologically sound manner.

Finally, for the French authorities, a permanent storage unit must absolutely remain a reversible solution during a certain period of time, in case of later recovery possibilities, mandatory removal due to non-conformity, regulatory obligations to limit storage period. Such permanent storage of liquid mercury waste in salt mines or rock formations, as proposed, would hardly be compatible with this general objective.

Comments related to article 5 and annex II regarding infra-red light detectors (mercury added products)

Mercury, when associated with tellurium and cadmium, has properties that allow specific uses in the optronic field. These infra-red light detectors built with this mercury alloy are essential for the military area, but their use is not limited to this area; they are also used in the civil space sector.

Annex IV section 1c of the RoHS Directive establishes an exemption for infra-red light detectors containing mercury, cadmium and lead from the prohibition of placing on the market set by article 4 paragraph 1 of this directive.

The French authorities would like to secure the use of infra-red light detectors, since the security of supply for this type of device for military use depends on the civilian market and since no alternative technologies seem to be available for the civilian space sector either.

However, Annex II part A, which does not include infra-red light detectors in the current regulation proposal, could possibly change after modifications of Annex A Part 1 of the Minamata Convention.

That is why the French authorities would like to know if infra-red light detectors may be considered as measuring devices among those mentioned under Annex II part B. This part of the Annex excludes some products from the list defined in Annex II part A. Even if it were the case, the French authorities are afraid that the current provisions of Annex II part B may jeopardize the exemption provided for in the RoHS directive about infra-red detectors. Hence the French authorities reserve the right to ask for wording modifications in this part of the proposal.

LITHUANIA

Lithuania has a scrutiny reservation on the whole Proposal.

Referring to the Presidency's invitation to submit comments, in particular regarding Art. 10 on Dental amalgam and in the light of the forthcoming discussions at the next WPE meeting on 21 April, Lithuania would like to express its opinion on this sensitive issue.

As regards other important issues such as compatibility of certain provisions of the Proposal (e.g. export/import restrictions of mercury and of the mercury compounds/mixtures (Art. 3, 4), export, import and manufacturing of mercury-added products (Art. 5 and Annex II)) with the PIC and REACH Regulations we are looking forward to the Commission's *non paper*. This document will be extremely useful for the development of further opinion, comments and suggestions to the Proposal.

Regarding ***Article 10*** on Dental amalgam Lithuania submits the following comments:

1. We support the provision that from 1 January 2019 onwards dental amalgam shall only be used in an encapsulated form (paragraph 1).

2. We have concerns on the scope of the proposed provisions in paragraph 2.

   Taking into account existing dental amalgam alternatives, Dental clinics could specialize their services and use mercury-free materials. We consider that it is reasonable to amend proposed provisions of paragraph 2 by specifying that only those Dental clinics that have installed amalgam separators shall be allowed to work with the dental amalgam.

   It should be noted that dental amalgam fillings are not popular among dentists and patients in Lithuania. The mandatory requirement that obliges all dental facilities to be equipped with amalgam separators to retain and collect mercury-containing amalgam residues would cause disproportional financial (purchase and maintanance of separators) and administrative burden to small Dental clinics and would hamper functioning thereof.

   Moreover, when considering the requirement to install amalgam separators in dental care clinics/facilities the type of services/chairsides should be taken into account. Therefore, it is not reasonable to install amalgam separators into the dental facilities of oral hygienists, surgeons, orthodontists and some others because these specialists do not use (remove) the dental amalgam. This lead us to the conclusion that it would be appropriate that the removal of amalgam fillings to be allowed only in specialized clinics, for work with dental amalgams and corresponding requirement could be set in the Proposal.

   Having said above, it is suggested to amend paragraph 2 of Article 10 as follows:

   "2. From 1 January 2019 onwards dental facilities **that work with dental amalgam** shall be equipped with amalgam separators aimed at retaining and collecting amalgam particles. Those separators shall be maintained as required to ensure a high level of ~~retention~~ **removal efficiency of the amalgam particles**."

3. There is a lack of clarity of provisions proposed in paragraph 3 regarding compliance of capsules and amalgam separators with not specified EN standards, national and international standards. Only the general provision to satisfy certain requirements that ensure an equivalent level of quality and level of retention is provided by giving the reference to requirements indicated in paragraphs 1 and 2. While the quality and retention requirements themselves are not specified in the paragraphs of Article 10 we would suggest to specify the provisions of paragraph 3 by giving the reference to concrete EN or ISO standards.

UNITED KINGDOM

UK comments shown in ***bold italics***.

[…]

Chapter I
General provisions

Article 1
Subject matter

This Regulation establishes measures and conditions concerning the trade, manufacture, use and interim storage of mercury, mercury compounds, mixtures, mercury-added products and the management of mercury waste **in order to ensure a high level of protection of human health and the environment from mercury**.

The added text should be amended so that PR Article 1 reads: "…in order to ensure a high level of protection of human health and the environment from anthropogenic emisssions and releases of mercury and mercy compounds."

Article 2
Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. 'mercury' means metallic mercury (Hg, CAS RN 7439-97-6);

1a. 'mercury compounds' means any substance consisting of atoms of mercury and one or more atoms of other chemical elements that can be separated into different components only by chemical reactions;

2. 'mercury-added product' means a product or product component that contains mercury and/or mercury compounds that were intentionally added;

3. 'mercury waste' means mercury that qualifies as waste, in accordance with Article 3(1), of Directive 2008/98/EC of the European Parliament and of the Council[1];

The definition of "mercury waste" in MC Article 11(2) applies 'for the purposes of the Convention' and includes mercury compounds. Therefore, " or mercury compounds" (as defined in the insertion of 1a above) needs to be inserted after "mercury". We flagged this point in our previous written comments and it needs attention, if only to explain to us why this insertion is considered inappropriate.

[1] Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives (OJ L 312 of 22.11.2008, p. 3).

4. 'export' means any of the following:

   a) the permanent or temporary export of a chemical meeting the conditions of Article 28(2) of the Treaty on the Functioning of the European Union;

   b) the re-export of a chemical not meeting the conditions of Article 28(2) of the Treaty on the Functioning of the European Union which is placed under a customs procedure other than the external Union transit procedure for movement of goods through the customs territory of the Union;

5. 'import' means the physical introduction into the customs territory of the Union of a chemical that is placed under a customs procedure other than the external Union transit procedure for movement of goods through the customs territory of the Union;

6. 'primary mercury mining' means mining in which the principal material sought is mercury**;**

6a. 'placing on the market' means supplying or making available, whether in return for payment or free of charge, to a third party. Import shall be deemed to be placing on the market.

#

[…]

Chapter III
Restrictions on use and storage of mercury and mercury compounds

Article 7
Industrial activities

1. The use of mercury and mercury compounds in the manufacturing processes listed in Part I of Annex III is prohibited as from the dates indicated therein.

2. The use of mercury and mercury compounds in the manufacturing processes listed in Part II of Annex III shall only be allowed under the conditions set out therein.

3. Interim storage of mercury and **of the** mercury compounds **listed in Annex I** shall be carried out in an environmentally sound manner.

   The Commission shall be empowered to adopt delegated acts in accordance with Article 17 in order to set out requirements for environmentally sound interim storage of mercury and mercury compounds adopted by the Conference of the Parties to the Convention, where the Union has supported the Decision concerned **by means of a Council Decision adopted in accordance with Article 218(9) TFEU**.

   ## We support the general approach but (1) question the choice of delegated acts over implementing acts and (2) would like clearer language on the triggers for the use of this power.

Implementing acts (rather than delegated acts) should be used for specifying requirements on interim storage for the following reasons:

- ***Implementing acts are used where uniform conditions are needed to implement a legally binding act (article 291 TFEU). Here is a general requirement (i.e. to carry out interim storage in an environmentally sound manner) and uniform conditions are needed to implement it.***

- ***A new annex to the MC containing requirements on interim storage may leave scope for policy choices in its implementation. The committee procedure in relation to implementing acts is therefore more appropriate.***

The conditions should be more clearly drafted to clarify that the conditions for using the power will only be satisfied when: 1) the COP of the MC has adopted requirements for interim storage in an additional annex in accordance with Article 10, paragraph 3 and Article 27 of the MC, and 2) the EU, acting in accordance with an Article 218.9 TFEU mandate, has supported this decision.

Article 8

New mercury-added products and new manufacturing processes

This whole Article 8 is remains under detailed consideration within the UK, particularly in terms of its possible impacts on innvotaion and SMEs. Comments will therefore await the conclusion of that consideration and the lifting of scrutiny reserve.

1. The manufacture and placing on the market of mercury-added products not covered by any known use prior to 1 January 2018 shall be prohibited.

2. Manufacturing processes involving the use of mercury and/or mercury compounds that did not exist prior to 1 January 2018 shall be prohibited.

   This paragraph shall not apply to processes manufacturing and/or using mercury-added products others than those falling under paragraph 1.

3. By way of derogation from paragraphs 1 and 2, where an economic operator intends to manufacture and/or place on the market a new mercury-added product or to operate a new manufacturing process, the operator shall notify the competent authorities of the Member State concerned and provide them, with the following:

   – a technical description of the product or process concerned;

   – an assessment of its environmental and health risks;

   – a detailed explanation of the manner in which such product or process must be manufactured, used and operated to ensure a high level of protection of the environment and of human health.

4. **The Member State concerned may forward to the Commision the notification received from the economic operator and may include its own assessment of the information provided therein.**

5. Upon **receipt of the** notification **forwarded** by the Member State concerned, the Commission shall verify in particular whether it has been demonstrated that the new mercury-added product or new manufacturing process would provide significant environmental and health benefits and that no technically and economically feasible mercury-free alternatives providing such benefits are available.

The Commission shall adopt decisions, by means of implementing acts, in view of specifying whether the relevant new mercury-added product or new manufacturing process is allowed.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

[…]

Chapter V
Penalties and reporting

[…]

Article 15
Report

1. Member States shall prepare, update and publish online a report with the following information:

c) information concerning the implementation of this Regulation;

d) information needed for the fulfilment by the Union and by the Member States of its reporting obligation established under Article 21 of the Minamata Convention;

The provisions on reporting should not cover Member State's reporting obligations under the Convention. Article 15(1)d should be amended to remove the requirement for Member States to report information needed for the fulfilment by the Member States of their reporting obligations. (This could be done by deleting "and by the Member States"). Similarly, paragraph 2 below should be amended to remove the possibility of the EU questionnaire providing for the possibility of the EU submitting a single report on behalf of the EU and its Member States. These changes are required because:

- ***Member States' reporting obligations will fall within areas of Member State competence, e.g. finance.***
- ***It is conceptually flawed to have EU legislation purporting to cover Member States' reporting obligations under the MC. The EU is likely to assume obligations under the MC to the extent that it has adopted internal legislation. Therefore, if it adopts legislation covering reporting aspects falling within shared competence this will imply that the EU has assumed responsibility for this reporting.***

e) a summary of the information gathered in accordance with Article 12;

f) ~~a list of individual stocks of mercury~~ **when** exceeding 50 metric tonnes~~, which are~~ **and located** ~~in~~ **on their** territor**ies:**

i) a list of individual stocks of mercury;

#The requirement in MC Article 3(5)(a) is that Parties shall endeavour to identify individual stocks of mercury or mercury compounds exceeding 50 tonnes. As now drafted, therefore, this goes beyond the MC and so cannot readily be supported.

ii) a list of sites where mercury waste are accumulated; and

 # there is no explicit requirement for this in the MC.

We therefore suggest that sub-para f) needs to be amended to:

> ***"f)the results of its endeavours to identify individual stocks of mercury or mercury compounds exceeding 50 metric tonnes as well as sources of mercury supply generating stocks exceeding 10 tonnes per year, that are located within its territory, including where possible a list of the nameand amount of such individual stocks. "***

The text here is from MC Article 3(5)(a) and would also render para g) below unneccesary.

g) where Member States are made aware, a list of sources ~~of mercury~~ supply**ing** ~~generating annual stocks of mercury exceeding~~ **more than** 10 metric tonnes **of mercury per year**.

#As above, sub para g) can be deleted if our suggested amendment to f) is made, but in any case sub para g) as drafted would make an endeavour into a hard requirement and so beyond the MC.

Member States shall inform the Commission of their report and of their updates within one month of their publication.

2. The Commission shall adopt appropriate questionnaires in order to specify the content, the information and the key performance indicators to be included in the report referred to in paragraph 1 as well as the format of this report and the timing of its publication and of its updates.

The questionnaires may also organise reporting in such a way as to enable the Union to provide the Secretariat of the Convention with a single report submitted on behalf of the Union and its Member States.

Paragraph 2 below should be amended to remove the possibility of the EU questionnaire providing for the possibility of the EU submitting a single report on behalf of the EU and its Member States.

The Commission shall adopt decisions, by means of implementing acts, to provide a template for those questionnaires and to make an electronic reporting tool available to the Member States.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

Chapter VI
Delegated and implementing powers

Article 16
Amendment of Annexes

The Commission shall be empowered to adopt delegated acts in accordance with Article 17 in order to amend Annexes I, II, III and IV to transpose Decisions adopted by the Conference of the Parties to the Convention, where the Union has supported the Decision concerned **by means of a Council Decision adopted in accordance with Article 218(9) TFEU**.

 # We can support the choice of delegated acts here subject to the following:

- ***The condition needs to be redrafted to clarify what COP Decisions would trigger the exercise of this power. We consider that the power should only be triggered in where the COP, with the support of the EU, has decided to:***

- ***extend the the MC provisions on exports and imports (Article 3, para 6 and 8) to specific mercury compounds by adopting an additional annex in accordance with Article 27 MC;***

- ***amend Annex A (Mercury-added products);***

- ***amend Annex B (Manufacturing processes in which mercury and mercury compounds are used).***

- ***amend Annex C (Artisanal and small scale gold mining)***

• ***We query the use of the word "transpose", which is used in EU legislation to refer to tranposition by Member States of EU legislation rather than amendment of EU legislation to fulfil international obligations.***

Article 17
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The delegation of powers referred to in Articles 7(3) and 16 shall be conferred on the Commission for an indeterminate period of time from the date of entry into force of this Regulation.

Paragraph 2 should be amended to delete reference to Article 7(3) in line with our view that the power in that provision should be one to make implementing acts rather than delegated acts.

Rather than having an indeterminate delegation, the delegation should be for a determinate period of 5 years with provision for tacit extension for a period of an identifical duration unless the EP or the Council oppose such extension not later than 3 months before the end of each period. The provision would read as follows:

> ***"The delegation of power referred to in Article 16 shall be conferred on the Commission for a period of 5 years from the (*).The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period. The Commission should also be required to report on the use of this power.***

3. The delegation of power referred to in Articles 7(3) and 16 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

The reference to Article 7(3) in paragraph 3 should be deleted.

3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of [*date*].

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4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 7(3) and 16 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 18
Committee procedure

1. For the adoption of forms for import and export under Article 6, of a decision under Article 8(4), and of questionnaires in accordance with Article 15(2) the Commission shall be assisted by a Committee. That Committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

Paragraph 1 requires amendment to also include Article 7(3), which we say should provide for implementing acts.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Where the committee delivers no opinion, the Commission shall not adopt the draft implementing act and the third subparagraph of Article 5(4) of Regulation (EU) No 182/2011 shall apply.

[…]

ANNEX II to ANNEX

Mercury-added products referred to in Article 5

Part A - Mercury-added products

Mercury-added products	Date after which the manufacture, import and export of the mercury-added product shall be prohibited
1. Batteries, except for button zinc silver oxide batteries with a mercury content < 2%, button zinc air batteries with a mercury content < 2%.	**31.12.2020**
2. Switches and relays, except 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.	**31.12.2020**
3. Compact fluorescent lamps (CFLs) for general lighting purposes that are ≤ 30 watts with a mercury content exceeding 5 mg per lamp burner.	**31.12.2020**
4. The following linear fluorescent lamps (LFLs) for general lighting purposes: **(**a) Triband phosphor < 60 watts with a mercury content exceeding 5 mg per lamp; **(**b) Halophosphate phosphor ≤ 40 watts with a mercury content exceeding 10 mg per lamp.	**31.12.2020**
5. High pressure mercury vapour lamps (HPMV) for general lighting purposes.	**31.12.2020**

6. The following mercury added cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays: (a) short length (≤ 500 mm) with mercury content exceeding 3.5 mg per lamp; (b) medium length (> 500 mm and ≤ 1 500 mm) with mercury content exceeding 5 mg per lamp; (c) long length (> 1 500 mm) with mercury content exceeding 13 mg per lamp.	**31.12.2020**
7. Cosmetics with mercury and mercury compounds, except those special cases included in Annex V entry 17 of Regulation (EC) No 1223/2009 of the European Parliament and of the Council[1].	**31.12.2020**
8. Pesticides, biocides and topical antiseptics.	**31.12.2020**
9. The following non-electronic measuring devices ~~where no suitable mercury-free alternative is available~~: ***#Deletion is correct: the words apply only to the exclusion and have been repositioned correctly by the amendment below.*** (a) barometers; (b) hygrometers; (c) manometers; (d) thermometers; (e) sphygmomanometers; This entry does not cover the following measuring devices: (a) non-electronic measuring devices installed in large-scale equipment or those used for high precision	**31.12.2020**

[1] Regulation (EC) No 1223/2009 of the European Parliament and of the Council of 30 November 2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59).

measurement **where no suitable mercury-free alternative is available**; **(**b) measuring devices more than 50 years old on 3 October 2007; **(**c) measuring devices, which are to be displayed in public exhibitions for cultural and historical purposes.	

Part B - Additional products excluded from the list in Part A of this Annex

Switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays and measuring devices, when they are used to replace a component of a larger equipment and provided that no feasible mercury-free alternative for that component is available, in accordance with Directive 2000/53/EC of the European Parliament and of the Council[2] and Directive 2011/65/EU of the European Parliament and of the Council[3].

[…]

[2] Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles (OJ L 269, 21.10.2000, p. 34).

[3] 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, p. 88).