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*Plenary sitting*

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**A8-0313/2016**

20.10.2016

**\*\*\*I**  
**REPORT**

on the proposal for a regulation of the European Parliament and of the Council  
on mercury, and repealing Regulation (EC) No 1102/2008  
(COM(2016)0039 – C8-0021/2016 – 2016/0023(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Stefan Eck

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▯ symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a regulation of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008 (COM(2016)0039 – C8-0021/2016 – 2016/0023(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0039),
  - having regard to Article 294(2) and Articles 192(1) and 207 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0021/2016),
  - having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
  - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
  - having regard to the opinion of the European Economic and Social Committee of 25 May 2016<sup>1</sup>,
  - after consulting the Committee of the Regions,
  - having regard to Rules 59 and 39 of its Rules of Procedure,
  - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A8-0313/2016),
1. Adopts its position at first reading hereinafter set out;
  2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
  3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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<sup>1</sup> OJ C 303, 19.8.2016, p. 122.

## Amendment 1

### Proposal for a regulation

#### Citation 1

*Text proposed by the Commission*

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 192(1) **and Article 207** thereof,

*Amendment*

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

## Amendment 2

### Proposal for a regulation

#### Recital 1

*Text proposed by the Commission*

(1) Mercury is a highly toxic substance which represents a global and major threat to human health, including by methylmercury in fish and seafood resources, the ecosystems and wildlife. ***Due to the transboundary nature of mercury pollution, between 40% and 80% of total mercury deposition in the Union originates from outside of the Union and therefore warrants action at local, regional, national and international levels.***

*Amendment*

(1) Mercury is a highly toxic substance which represents a global and major threat to human health, including by methylmercury in fish and seafood resources, the ecosystems and wildlife. ***Mercury exposure at high levels can harm the brain, heart, kidneys, lungs, and immune system of people of all ages. High levels of methylmercury in the bloodstream of unborn babies and young children can harm the developing nervous system, making children less able to think and learn and potentially reducing their IQ. The United Nations Environment Programme (UNEP) and the World Health Organization (WHO) list mercury among the "ten chemicals of major public health concern". It is necessary therefore to introduce measures on mercury and conditions for its use .***

*Justification*

*see US EPA 2014 and [http://www.who.int/ipcs/assessment/public\\_health/chemicals\\_phc/en/](http://www.who.int/ipcs/assessment/public_health/chemicals_phc/en/)*

## Amendment 3

### Proposal for a regulation

## **Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) The use of mercury in production processes should be phased out and, to that end, incentives should be provided for research into alternative substances to mercury with characteristics that are innocuous, or in any case, less dangerous for the environment and for health.***

## **Amendment 4**

### **Proposal for a regulation**

#### **Recital 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***(1b) Due to the transboundary nature of mercury pollution, between 40 % and 80 % of total mercury deposits in the Union originate from outside of the Union, while 70 % of the mercury contaminated sites are concentrated in industrial regions in Europe and North America; and therefore action at local, regional, national and international levels is required.***

## **Amendment 5**

### **Proposal for a regulation**

#### **Recital 2**

*Text proposed by the Commission*

*Amendment*

(2) Most mercury emissions and associated exposure risks result from anthropogenic activities, including primary mercury mining and processing, the use of mercury in products, industrial processes and artisanal and small-scale gold mining

(2) Most mercury emissions and associated exposure risks result from anthropogenic activities, including primary mercury mining and processing, the use of mercury in products, industrial processes and artisanal and small-scale gold mining

("ASGM") and mercury emissions originating in particular from coal combustion and the management of mercury waste.

("ASGM"), *contaminated sites* and mercury emissions originating in particular from coal combustion and the management of mercury waste. *Fossil fuel combustion in power plants and industrial boilers together with residential heating constitute almost half of global mercury emissions. Therefore, the transition to renewable energy production along with energy efficiency measures should be accelerated in order to reduce significantly the release of mercury into the atmosphere.*

## Amendment 6

### Proposal for a regulation Recital 3 a (new)

*Text proposed by the Commission*

*Amendment*

**(3a)** *The European Pollutant Release and Transfer Register (E-PRTR) established by Regulation (EC) No 166/2006 of the European Parliament and of the Council<sup>1a</sup> aims to provide competent authorities, policymakers, scientists and the general public with a coherent and Union-wide industrial release and transfers database that also covers mercury. Users are given access to information on releases and transfers from industrial facilities in their neighbourhood or country, which can be compared with other facilities all over the Union. That access to data has the potential to ensure a real participation of citizens in environmental matters. The E-PRTR contributes to greater transparency and that already existing tracking tool for pollutants should therefore be extended to mercury waste flows, in order to minimise the risk of fraud and to improve the control of mercury transfers in waste.*

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<sup>1a</sup> *Regulation (EC) No 166/2006 of the European Parliament and of the Council*



*of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 033, 4.2.2006, p.1).*

*Justification*

*The use of the E-PRTR will minimise the risk of fraud and will contribute to the overall picture that we expect to achieve from our request on an EU-wide inventory.*

**Amendment 7**

**Proposal for a regulation**  
**Recital 5**

*Text proposed by the Commission*

(5) Significant progress has been achieved in the Union in the past 10 years in the field of mercury management following the adoption of the Strategy and of a wide range of measures concerning mercury emissions, supply, demand and use and the management of mercury surplus and stocks.

*Amendment*

(5) Significant progress has been achieved in the Union in the past 10 years in the field of mercury management following the adoption of the Strategy and of a wide range of measures concerning mercury emissions, supply, demand and use and the management of mercury surplus and stocks. ***Nonetheless, further action is required as currently the demand in the market for mercury is estimated at 260-400 metric tonnes per year and even after the foreseen phase-out of the use of mercury in the chlor-alkali industry by 2017 the projected demand for mercury in 2025-2030 is estimated at 40-220 metric tonnes per year. It is necessary, therefore, that particular attention is devoted to the full implementation of this Regulation in accordance with the applicable rules.***

*Justification*

*See Commission staff working document SWD, impact assessment accompanying this proposal 2016 final p.26/ 186.*

**Amendment 8**

**Proposal for a regulation**  
**Recital 6**

*Text proposed by the Commission*

(6) The Strategy establishes that the negotiation and conclusion of an international legally-binding instrument should be a priority *as Union action alone cannot guarantee effective protection of the citizens of the Union against* the negative health effects of mercury.

*Amendment*

(6) ***In addition to*** the Strategy, ***which*** establishes that the negotiation and conclusion of an international legally-binding instrument should be a priority, ***the Union should endeavour to excel among its global partners in order to*** guarantee a protection of ***its*** citizens ***from*** the negative health effects of mercury ***that is truly effective, by setting best practice examples to all countries that are Parties to the Minamata Convention on Mercury.***

**Amendment 9**

**Proposal for a regulation**  
**Recital 6 a (new)**

*Text proposed by the Commission*

*Amendment*

***(6a) In order to reflect the current scientific understanding of risks from methylmercury, the Commission should evaluate the current health-based intakes and should establish new mercury health benchmarks, when undertaking the review of this Regulation.***

**Amendment 10**

**Proposal for a regulation**  
**Recital 8**

*Text proposed by the Commission*

*Amendment*

(8) Swift ratification of the Convention by the Union and its Member States will encourage major global mercury users and emitters, that are signatories of the Convention, to ratify and implement it.

(8) Swift ratification of the Convention by the Union and its Member States will encourage major global mercury users and emitters that are signatories of the Convention, to ratify and implement it. ***Further action undertaken by the Union, going beyond the Convention requirements, would lead the way, as it was the case with Regulation (EC) No***

***1102/2008 of the European Parliament and of the Council<sup>1a</sup>, for mercury-free products and processes.***

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<sup>1a</sup> ***Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury (OJ L 304, 14.11.2008, p. 75).***

## **Amendment 11**

### **Proposal for a regulation**

#### **Recital 9**

*Text proposed by the Commission*

(9) As Union legislation already transposes many of the obligations of the Convention, this Regulation should ***only*** lay down provisions that complement the Union acquis and that are needed to ensure its full alignment with the Convention and, accordingly, to enable the Union and its Member States to ratify and implement it.

*Amendment*

(9) As Union legislation already transposes many of the obligations of the Convention, this Regulation should ***as a priority*** lay down provisions that complement the Union acquis and that are needed to ensure its full alignment with the Convention and, accordingly, to enable the Union and its Member States to ratify and implement it. ***This Regulation should also lay down new provisions that go beyond the Convention, in line with the Strategy and Union legislation on the environment and the protection of human health, particularly in the field of waste.***

*Justification*

*The new regulation should not restrict itself to adapting Union legislation to the Convention. The Union could move forward more quickly on some aspects of the Convention, thus setting the foundations for the Convention in the future.*

## **Amendment 12**

### **Proposal for a regulation**

#### **Recital 9 a (new)**

*Text proposed by the Commission*

*Amendment*

***(9a) The Member States are considered to be developed countries under the Convention, and the Union is not only advanced with its legislation but also in possession of alternative available technologies; therefore, the Union should adopt as many of the options and measures proposed and provided by the Convention in order to set an ambitious direction for all the other Parties to the Convention.***

**Amendment 13**

**Proposal for a regulation  
Recital 9 b (new)**

*Text proposed by the Commission*

*Amendment*

***(9b) Additional measures at Union level which have a level of ambition that goes beyond that of the Convention should be able to be adopted where they make it possible to reduce the harmful effects of mercury efficiently and effectively, in accordance with the scientific state of the art. By way of example, the Union should encourage the use of recycled mercury for industrial purposes.***

*Justification*

*In order to reduce global mercury production and send a positive signal, recycling and the use of recycled mercury should be encouraged in the Union.*

**Amendment 14**

**Proposal for a regulation**

## Recital 10

*Text proposed by the Commission*

(10) The mercury export ban set out in Regulation (EC) No 1102/2008 *of the European Parliament and of the Council*<sup>39</sup> should be complemented by *restrictions* on the import of mercury *depending on the source, the intended use and the place of origin of mercury*. The national authorities designated in accordance with Regulation (EU) No 649/2012 of the European Parliament and of the Council<sup>40</sup> should perform the administrative functions linked to the implementation of *such restrictions*.

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<sup>39</sup> *Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury (OJ L 304, 14.11.2008, p. 75).*

<sup>40</sup> Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60).

*Amendment*

(10) The mercury export ban set out in Regulation (EC) No 1102/2008 should be complemented by *a ban* on the import of mercury *for purposes other than disposal as waste. Such a derogation for mercury imported for disposal as waste should apply until 31 December 2027. In the meantime, the Commission in collaboration with Member States and the relevant stakeholders should promote and facilitate the capacity building of third countries with regard to the treatment of mercury*. The national authorities designated in accordance with Regulation (EU) No 649/2012 of the European Parliament and of the Council<sup>40</sup> should perform the administrative functions linked to the implementation of *those prohibition measures*.

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<sup>40</sup> Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60).

## Amendment 15

### Proposal for a regulation

#### Recital 11

*Text proposed by the Commission*

(11) The export, import and manufacturing of a range of mercury-added

*Amendment*

(11) The export, import and manufacturing of a range of mercury-added

products *accounting for a significant share of the use of mercury and mercury compounds within the Union and globally* should be prohibited.

products *which do not comply with the limits established by the applicable Union legislation, should be phased out with an ultimate short-term target that all products containing intentionally added mercury should be prohibited; in the meantime, continued use should be strictly monitored and should meet the conditions set out in Articles 3 and 4 of this Regulation.*

## **Amendment 16**

### **Proposal for a regulation**

#### **Recital 12**

*Text proposed by the Commission*

*(12) This Regulation should therefore have a twofold legal basis, Articles 192(1) and 207 of the TFEU, as it seeks to protect both the environment and human health and to ensure uniformity in respect of its trade aspects through the export and import prohibition and restrictions affecting mercury, mercury compounds and mercury-added products.*

*Amendment*

*deleted*

## **Amendment 17**

### **Proposal for a regulation**

#### **Recital 12 a (new)**

*Text proposed by the Commission*

*(12a) With the aim of reducing imports of mercury and storage of mercury waste, either stabilised or partially stabilised, the use of mercury obtained by means of recycling should be encouraged where possible.*

*Amendment*

## **Amendment 18**

### **Proposal for a regulation**

#### **Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Regulation should not prevent Member States from maintaining or introducing more stringent protective measures, provided that such measures are compatible with the Treaties and the Commission has been notified.***

## **Amendment 19**

### **Proposal for a regulation Recital 13 b (new)**

*Text proposed by the Commission*

*Amendment*

***(13b) This Regulation aims to protect human health. Therefore, it should not prevent the export, import and manufacturing of homeopathic medical products, provided that such products confer significant health benefits and there are no mercury-free active substances available as alternatives. The anthroposophic medicinal products described in an official pharmacopoeia and prepared by a homeopathic method should be treated, for the purpose of this Regulation, in the same way as homeopathic medicinal products.***

## **Amendment 20**

### **Proposal for a regulation Recital 14**

*Text proposed by the Commission*

*Amendment*

(14) In the absence of relevant available mercury-free production processes, ***operating conditions for the production of sodium or potassium methylate or ethylate involving the use of mercury should be***

***(14) The production of alcoholates involving the use of mercury as an electrode should be phased out and replacement by feasible mercury-free production processes should take place as***

*set.*

*soon as possible.* In the absence of relevant available mercury-free production processes *for* potassium methylate or ethylate, *the period for their phasing out should be longer. In order to enable industry to make investments sufficiently in advance, a date should be set as soon as possible for the introduction of a ban on mercury in the production of sodium or potassium methylate or ethylate.*

## Amendment 21

### Proposal for a regulation Recital 15

*Text proposed by the Commission*

(15) The manufacturing and placing on the market of new mercury-added products and the establishment of new mercury-based manufacturing processes would increase the use of mercury and of mercury compounds and mercury emissions within the Union. Such new activities should therefore be prohibited unless an assessment demonstrates that these uses would provide significant environmental and health benefits and that no technically *and economically* feasible mercury-free alternatives providing such benefits are available.

*Amendment*

(15) The manufacturing and placing on the market of new mercury-added products and the establishment of new mercury-based manufacturing processes would increase the use of mercury and of mercury compounds and mercury emissions within the Union. Such new activities should therefore be prohibited unless an assessment *of the risks and the benefits* demonstrates that these uses would provide significant *net* environmental and health benefits and that no technically feasible mercury-free alternatives providing such benefits are available.

## Amendment 22

### Proposal for a regulation Recital 16

*Text proposed by the Commission*

(16) The use of mercury and mercury compounds in ASGM accounts for a significant share of mercury use and emissions worldwide, and should therefore

*Amendment*

(16) The use of mercury and mercury compounds in ASGM accounts for a significant share of mercury use and emissions worldwide *with negative effects both for the local communities and*



be regulated.

*globally, and should therefore be eliminated in the Union and regulated at international level. It is estimated that small-scale gold mining is practised in 77 countries. Globally, small-scale miners produce between 20 % and 30 % of all gold that is mined. The Union should encourage, within the framework of the Convention, all other Parties to the Convention to cooperate in order to monitor closely through accurate and strict reporting of export and import activity the trade of surplus mercury intended for use in ASGM and to track the transportation of mercury in waste.*

### **Amendment 23**

#### **Proposal for a regulation Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

*(16a) It is essential that mercury waste is traceable to ensure that it is properly treated and disposed of and to prevent its illegal use. An effective traceability system throughout the mercury waste management chain should therefore be introduced at Union level.*

### **Amendment 24**

#### **Proposal for a regulation Recital 16 b (new)**

*Text proposed by the Commission*

*Amendment*

*(16b) Member States and the Union should seek to reduce the human and environmental impact of ASGM activities that use mercury. In developing policy solutions in that regard, the Union and Member States should take account of the role that poverty plays as a cause of ASGM activities. Member States should*

*therefore aim to develop economic alternatives to ASGM activities. In addition, the Union should firmly commit to cooperating with, and providing technical assistance to, the other Parties to the Convention.*

## **Amendment 25**

### **Proposal for a regulation Recital 16 c (new)**

*Text proposed by the Commission*

*Amendment*

*(16c) When developing policy solutions for the problem of mercury use in ASGM, Member States should aim, in parallel with addressing economic and social factors, to protect communities from the criminal structures involved in ASGM activities and to develop solutions to tackle illegal mining activities in general.*

## **Amendment 26**

### **Proposal for a regulation Recital 16 d (new)**

*Text proposed by the Commission*

*Amendment*

*(16d) Member States that have ASGM activities in which mercury is used on their territory should develop a national action plan as also required by Article 7(3) of the Convention.*

## **Amendment 27**

### **Proposal for a regulation Recital 16 e (new)**

*Text proposed by the Commission*

*Amendment*

*(16e) In order to highlight the problem of mercury use in ASGM and allow consumers to make informed decisions*

*when purchasing gold products, the Union should take the steps necessary to promote, among the other Parties to the Convention, the creation of a labelling scheme for gold that has been extracted without recourse to the use of mercury.*

## Amendment 28

### Proposal for a regulation Recital 16 f (new)

*Text proposed by the Commission*

*Amendment*

*(16f) The use and the transport of mercury involves health and environmental risks. In order to track mercury use in ASGM activities, the Commission should encourage the Parties to the Convention to create a worldwide tracking tool. The Commission should aim to model that new tracking tool on the E-PRTR in terms of performance and effectiveness.*

## Amendment 29

### Proposal for a regulation Recital 17

*Text proposed by the Commission*

*Amendment*

(17) The use of dental amalgam in an encapsulated form and the implementation of amalgam separators should be made mandatory to protect dental practitioners and patients from mercury exposure and to ensure that resulting mercury waste *are not* released into the environment, but *are* collected and subjected to sound waste management. *Given the size of the undertakings from the dentistry sector concerned by this change, it is appropriate to provide sufficient time to adapt to the new provision.*

(17) *Pending a total elimination of the use of mercury in dentistry*, the use of dental amalgam in an encapsulated form and the implementation of amalgam separators, *which are already widespread in the Union, with a minimum retention efficiency* should be made mandatory to protect dental practitioners and patients from mercury exposure and to ensure that resulting mercury waste *is, under no circumstances* released into the environment, but *is* collected and subjected to sound *and legal* waste management. *To ensure that amalgam separators are effective, minimum requirements for the*

*performance of equipment and for amalgam waste management by dental practitioners as well as the training of dental practitioners should be ensured at Union level. In order to protect dental practitioners, patients and the environment from mercury exposure, the use of dental amalgam should be phased out in the Union as is already the case in several European countries.*

## **Amendment 30**

### **Proposal for a regulation**

#### **Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

*(17a) Bucodental health awareness-raising and education is the most effective way of preventing tooth cavities and decay and, hence, of reducing the use of a dental restoration such as dental amalgam. Member States ought to promote bucodental health, for example by setting national objectives.*

## **Amendment 31**

### **Proposal for a regulation**

#### **Recital 17 b (new)**

*Text proposed by the Commission*

*Amendment*

*(17b) Parties to the Convention have committed to take measures to encourage professional organisations and dental schools to educate and train dental professionals and students on the use of mercury-free dental restoration alternatives and on promoting best management practices; such measures should be taken into account when reviewing Directive 2005/36/EC of the European Parliament and of the*

Council<sup>1a</sup>.

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<sup>1a</sup> *Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).*

## Amendment 32

### Proposal for a regulation Recital 17 c(new)

*Text proposed by the Commission*

*Amendment*

***(17c) Member States should be called on to support the training of students and dentists on the use of mercury-free alternatives, in particular for vulnerable groups such as pregnant women and children, and to encourage buccodental health research and innovation in order to improve knowledge of existing materials and restoration techniques and to develop new materials.***

*Justification*

*Research into restoration materials ought to be encouraged, in particular as regards new materials, about which knowledge remains limited and a complete risk analysis cannot be carried out. It is one of the recommendations made by the Convention.*

## Amendment 33

### Proposal for a regulation Recital 18

*Text proposed by the Commission*

*Amendment*

***(18) Most of the criteria established in Council Directive 1999/31/EC<sup>41</sup> for the temporary storage of mercury waste should apply to the permanent storage of mercury waste in underground storage facilities. The applicability of some of***

***(18) Due to the hazardous properties of mercury, its high market value and its compact volume as a result of which it is very attractive for black market procurement, the criteria for its temporary storage should be different from those for***

*those criteria should depend on the specific characteristics of each underground storage facility, as determined by the competent authorities of the Member States in charge of the implementation of Directive 1999/31/EC.*

*its permanent disposal. In order to ensure its long-term safe disposal, the permanent disposal of metallic mercury should be prohibited and it should be transformed into mercury sulfide in its most irreversible form prior to permanent disposal. If, after the conversion of the mercury into mercury sulfide, the mercury waste is as safe as after solidification, no further treatment is required. That would also ensure its non-availability as a commodity. Over 6 000 metric tonnes of metallic mercury waste are expected to be generated in the Union by 2017, mainly as a result of the mandatory decommissioning of mercury cells in the chlor-alkali industry in accordance with Commission Implementing Decision 2013/732/EU<sup>41a</sup>. Given the limited available capacity for undertaking the transformation of liquid mercury waste, the temporary storage of liquid mercury waste should still be allowed under this Regulation for a period of time sufficient to ensure the transformation of all such waste generated, but only in above-ground facilities.*

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<sup>41</sup> Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182 of 16.7.1999, p. 1).

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<sup>41a</sup> Commission Implementing Decision 2013/732/EU of 9 December 2013 establishing the best available techniques (BAT) conclusions, under Directive 2010/75/EU of the European Parliament and of the Council on industrial emissions, for the production of chlor-alkali (OJ L 332, 11.12.2013, p. 34).

**Amendment 34**

**Proposal for a regulation**  
**Recital 18 a (new)**

***(18a) The permanent disposal without pre-treatment of metallic mercury that is considered as waste should be ruled out owing to the risks that such disposal poses, as it is an extremely hazardous substance in its liquid form. Prior to the permanent disposal of mercury waste, the relevant operations to convert it into mercury sulfide and solidify such waste should be carried out in order to reduce these risks, in accordance with Article 6 of Directive 1999/31/EC. The permanent disposal of mercury waste should be allowed only after it has been converted into mercury sulfide and solidified.***

*Justification*

*Metallic mercury is a liquid, and the management of such waste poses greater risks than is the case for solids. Directive 1999/31/EC prohibits the acceptance of liquid waste in landfills. By analogy and in view of its hazardous nature, the same should apply to mercury waste. To minimise the risks, permanent storage should be permitted only where mercury waste has first undergone stabilisation and solidification treatment.*

**Amendment 35**

**Proposal for a regulation  
Recital 18 b (new)**

***(18b) Contaminated sites contribute to re-mobilisation and re-emissions and releases of mercury to air, soil and water. In the absence of comprehensive information about abandoned contaminated sites, the development of an inventory and guidelines for the management of all contaminated sites in the Union is necessary. In order to allow for that development, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of laying down the methods and approaches for the ecologically***

*sustainable management and remediation of sites contaminated by mercury or mercury compounds, in line with the polluter pays principle, when possible.*

### **Amendment 36**

#### **Proposal for a regulation Recital 18 c (new)**

*Text proposed by the Commission*

*Amendment*

*(18c) Any type of incineration of mercury waste should be prohibited as it is incompatible with the environmentally sound management of mercury waste.*

### **Amendment 37**

#### **Proposal for a regulation Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

*(19a) In order to allow for adaptation to the latest innovation and technological progress, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of prohibiting or allowing new products and processes using mercury.*

### **Amendment 38**

#### **Proposal for a regulation Recital 20**

*Text proposed by the Commission*

*Amendment*

*(20) In order to ensure uniform conditions for the implementation of this Regulation with regard to prohibiting or allowing new mercury using products and processes and reporting obligations, implementing powers should be conferred on the Commission. Those powers should*

*deleted*



*be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and the Council<sup>42</sup>.*

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<sup>42</sup> *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).*

### Amendment 39

#### Proposal for a regulation Article 1 – paragraph 1

*Text proposed by the Commission*

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.

*Amendment*

This Regulation establishes measures and conditions concerning the trade, manufacture, use and 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 and animal health and the environment from mercury. Where appropriate, Member States may apply stricter requirements than those laid down in this Regulation.*

### Amendment 40

#### Proposal for a regulation Article 2 – paragraph 1 – point 1 a (new)

*Text proposed by the Commission*

*Amendment*

*1a. 'mercury compound' 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;*

## Amendment 41

### Proposal for a regulation

#### Article 2 — paragraph 1 – point 6 a (new)

*Text proposed by the Commission*

*Amendment*

**6a.** *‘temporary storage’ means the storage of mercury or mercury compounds, defined as mercury waste, for a limited period of time before it is converted into mercury sulfide with the best available technology and solidified and before being disposed of permanently.*

## Amendment 42

### Proposal for a regulation

#### Article 3 – paragraph 1 – subparagraph 2

*Text proposed by the Commission*

*Amendment*

The first subparagraph shall not apply to the export of the mercury compounds listed in Annex I for laboratory-scale research.

The first subparagraph shall not apply to the export of the mercury compounds listed in Annex I for laboratory-scale research **and, when such compounds are used as active substances for the manufacturing of homeopathic medicinal products as defined in Article 1(5) of Directive 2001/83/EC of the European Parliament and of the Council<sup>1a</sup>.**

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<sup>1a</sup> *Directive 2001/83/EC of the European Parliament and of the Council of 6 November 2001 on the Community code relating to medicinal products for human use (OJ L 311, 28.11.2001, p. 67).*

## Amendment 43

### Proposal for a regulation

#### Article 4 – paragraph 1

*Text proposed by the Commission*

*Amendment*

1. The import of mercury and of

1. The import of mercury and of

mixtures listed in Annex I *for uses other than disposal as waste* shall be prohibited.

By way of derogation from the first subparagraph, import *shall be allowed in any of the following circumstances:*

– *the exporting country is a Party to the Convention and the exported mercury is not from primary mercury mining as set out in Article 3(3) and (4), of that Convention;*

– *the exporting country not being a Party to the Convention has provided certification that the mercury is not from primary mercury mining and not from the chlor-alkali industry, and the importing Member State has granted its written consent to the import.*

*mercury compounds and* mixtures listed in Annex I shall be prohibited.

*The first subparagraph shall not apply to the import of mercury compounds listed in Annex I when such compounds are used as active substances for the manufacturing of homeopathic medicinal products as defined in Article 1(5) of Directive 2001/83/EC.*

By way of derogation from the first subparagraph, import *of mercury and of mercury compounds and mixtures listed in Annex I for disposal as waste shall be allowed until 31 December 2027. The Commission is empowered to adopt delegated acts in accordance with Article 17 to amend this Regulation by extending this derogation, taking into account the conclusions of the report referred to in subparagraph 5.*

*The Commission in collaboration with Member States and relevant stakeholders shall promote and facilitate the development, transfer and diffusion of, and access to, up-to-date environmentally sound alternative technologies for developing countries which are Parties to the Convention, in particular the least developed countries. The Commission shall identify the financial and technical means for contributing to the capacity-building and the transfer of technical assistance and technology, pursuant to the obligations deriving from the Convention, in relation to all areas and phases of the treatment of mercury, including the disposal as waste.*

*By 1 January 2026, the Commission shall present an implementation and feasibility report which evaluates the capacity-building and technical assistance provided by the Union, its Member States and by relevant stakeholders to third countries, and evaluates whether the situation in the various regions allows for the treatment of mercury as a waste on a regional basis.*

*By way of derogation from the first subparagraph, the import of recycled mercury in the Union shall be allowed until ... [three years after the date of entry into force of this Regulation].*

*By ... [18 months after the date of entry into force of this Regulation], the Commission shall submit to the European Parliament and the Council a report on the use of recycled mercury in the Union, the availability of recycled mercury and estimations on the future demand for recycled mercury based on the trends and the obligations arising from this Regulation, accompanied, where appropriate, by a legislative proposal for the extension of the derogation for the import of recycled mercury.*

*The import of recycled mercury shall be allowed only when the exporting country is a Party to the Convention and the economic operator has provided certification about the life-cycle of the recycled mercury and the recycling has been done in a licenced recycling facility in accordance with Union standards.*

#### **Amendment 44**

##### **Proposal for a regulation Article 5 – paragraph 1**

*Text proposed by the Commission*

1. Without prejudice to stricter requirements set out in other applicable Union legislation, the export, import and the manufacturing in the Union of the mercury-added products as set out in Annex II shall be prohibited from **1 January 2021**.

*Amendment*

1. Without prejudice to stricter requirements set out in other applicable Union legislation, the export, import and the manufacturing in the Union of the mercury-added products as set out in Annex II shall be prohibited **as** from **the dates specified therein**.

#### **Amendment 45**

##### **Proposal for a regulation**

## Article 5 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. The Commission shall by 1 January 2018 establish a list of all mercury-added products imported, exported or manufactured in the Union which are not listed in Annex II.***

## Amendment 46

### Proposal for a regulation

#### Article 5 – paragraph 2 – indent 2

*Text proposed by the Commission*

*Amendment*

– products for research, ***calibration of instrumentation***, for use as reference standard.

– products for research, for use as reference standard.

## Amendment 47

### Proposal for a regulation

#### Article 5 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

***2a. Based on the list established pursuant to paragraph 1a, the Commission is empowered to adopt delegated acts in accordance with Article 17 to amend Annex II in order to prohibit the manufacturing, import and export of mercury-added products by 1 January 2020.***

## Amendment 48

### Proposal for a regulation

#### Article 5 – paragraph 2 b(new)

**2b.** *The Commission shall undertake an expert assessment of mercury use in the manufacture of vaccines, as also mentioned in the Council conclusions of 24 June 2005 and the European Parliament Resolution of 14 March 2006, with a view to achieving a restriction of such use and, when appropriate and safe alternatives exist, a total ban, and to support research into viable options for the future delivery of thiomersal-free multi-dose vaccines in developing countries.*

#### **Amendment 49**

##### **Proposal for a regulation**

##### **Article 7 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

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.***

*Amendment*

The Commission ***is*** empowered to adopt delegated acts in accordance with Article 17 ***to supplement this Regulation*** 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.

#### **Amendment 50**

##### **Proposal for a regulation**

##### **Article 8 – paragraph – 1 (new)**

*Text proposed by the Commission*

*Amendment*

***-1.*** ***By ...[one year after the date of entry into force of this Regulation], economic operators shall notify the competent authorities of all their existing products and manufacturing processes containing or using mercury and/or mercury compounds, including data on***

*the total quantities as well as the quantities per product of mercury and/or mercury compounds used for the previous year.*

## **Amendment 51**

### **Proposal for a regulation Article 8 – paragraph 1**

*Text proposed by the Commission*

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.

*Amendment*

1. The manufacture and placing on the market of mercury-added products *that were not notified to the competent authorities by ...[one year after the date of entry into force of this Regulation]* shall be prohibited.

## **Amendment 52**

### **Proposal for a regulation Article 8 – paragraph 2**

*Text proposed by the Commission*

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

*Amendment*

2. Manufacturing processes involving the use of mercury and/or mercury compounds that *were not notified to the competent authorities by...[one year after the date of entry into force of this Regulation]* shall be prohibited.

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

## **Amendment 53**

### **Proposal for a regulation Article 8 – paragraph 3 – introductory part**

*Text proposed by the Commission*

3. By way of derogation from

*Amendment*

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:

paragraphs 1 and 2 *and only where a new mercury-added product or new manufacturing process would provide significant net environmental and health benefits and where no technically feasible mercury-free alternatives providing such benefits are available, in the event that* 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:

#### **Amendment 54**

##### **Proposal for a regulation Article 8 – paragraph 3 – indent - 1 (new)**

*Text proposed by the Commission*

*Amendment*

- *evidence demonstrating the absence of technically feasible mercury-free alternatives providing significant net environmental and health benefits;*

#### **Amendment 55**

##### **Proposal for a regulation Article 8 – paragraph 3 – indent 2**

*Text proposed by the Commission*

*Amendment*

- an assessment of its environmental and health risks;

- an assessment of its environmental and health risks *and benefits;*

#### **Amendment 56**

##### **Proposal for a regulation Article 8 – paragraph 3 – indent 3**

*Text proposed by the Commission*

*Amendment*

- a detailed explanation of the manner in which such product or process

- 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.

must be manufactured, used and operated **and, disposed of after use as waste in order** to ensure a high level of protection of the environment and of human health.

## Amendment 57

### Proposal for a regulation Article 8 – paragraph 4

#### *Text proposed by the Commission*

4. Upon notification 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).***

## Amendment 58

### Proposal for a regulation Article 9

#### *Text proposed by the Commission*

Member States on the territory of which **more than insignificant** artisanal and small-scale gold mining and processing activities are carried out shall:

- **take steps to reduce, and where**

#### *Amendment*

4. Upon notification 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 **net** environmental and health benefits and that no technically feasible mercury-free alternatives providing such benefits are available.

The *Commission* shall adopt **delegated** acts **in accordance with Article 17 to supplement this Regulation** in view of specifying whether the relevant new mercury-added product or new manufacturing process is allowed.

#### *Amendment*

Member States on the territory of which artisanal and small-scale gold mining and processing activities **using mercury or mercury compounds** are carried out shall:

- **eliminate** the use of mercury and

*feasible eliminate*, the use of mercury and mercury compounds in, and the emissions and releases to the environment of mercury from, such mining and processing;

- develop and implement a national plan in accordance with Annex IV.

mercury compounds in, and the emissions and releases to the environment of mercury from, such mining and processing;

- develop and implement a national plan in accordance with Annex IV.

*The Commission shall encourage the Parties to the Convention to create a worldwide tracking tool, so that mercury use for ASGM purposes is tracked.*

*The Commission shall promote among the Parties to the Convention the creation and implementation of a labelling scheme that develops consumer awareness worldwide of the availability of mercury-free extracted gold.*

## Amendment 59

### Proposal for a regulation Article 10 – paragraph 1

*Text proposed by the Commission*

1. From **1 January 2019 onwards** dental amalgam shall only be used in **an** encapsulated form.

*Amendment*

1. From ...**[one year after the date of entry into force of this Regulation]**, dental amalgam shall only be used in **pre-dosed** encapsulated form.

## Amendment 60

### Proposal for a regulation Article 10 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. From ...[one year after the date of entry into force of this Regulation], the use of dental amalgam in any form shall be prohibited for the treatment of pregnant or breastfeeding women or individuals who undergo treatment on their deciduous teeth.***

## Amendment 61

### Proposal for a regulation Article 10 – paragraph 1 b (new)

*Text proposed by the Commission*

*Amendment*

**1b.** *The use of dental amalgam shall be phased out by 31 December 2022.*

## Amendment 62

### Proposal for a regulation Article 10 – paragraph 2

*Text proposed by the Commission*

*Amendment*

2. From **1 January 2019** onwards dental facilities 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.

2. From ...**[one year after the date of entry into force of this Regulation]**, dental facilities shall be equipped with amalgam separators aimed at retaining and collecting **all** amalgam particles, **including those contained in used water**. Those separators shall be maintained as required to ensure a high **and ongoing** level of retention **of at least 95 % of amalgam particles**.

## Amendment 63

### Proposal for a regulation Article 10 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a.** *By way of derogation from paragraph 1b, the use of dental amalgam shall continue to be allowed in respect of specific medical needs and only if it is strictly necessary for patient-related health reasons and there is no satisfactory alternative.*

## Amendment 64

### Proposal for a regulation

**Article 10 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

**2b.** *Notwithstanding paragraphs 1 to 2 a, Member States may further restrict the use of dental amalgam, in accordance with Article 193 TFEU.*

**Amendment 65**

**Proposal for a regulation**

**Article 10 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

**2c.** *By...[two years after the date of entry into force of this Regulation], the Member States shall set out how they intend to implement the phase-out of dental amalgam under paragraphs 1a and 1b, and shall also set national objectives for oral health, and communicate how they intend to implement that phase-out and those objectives to the Commission.*

**Amendment 66**

**Proposal for a regulation**

**Article 10 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a.** *Dental practitioners shall be responsible for the conditioning and disposal of their waste and shall make sure that these stages are carried out in an environmentally sound manner. They shall ensure that the service providers that collect their waste comply with the applicable rules.*

**Amendment 67**

**Proposal for a regulation**

## Chapter IV - title

*Text proposed by the Commission*

Storage and disposal of mercury waste

*Amendment*

Storage and disposal of mercury waste **and contaminated sites**

### Amendment 68

#### Proposal for a regulation

#### Article 11 – paragraph 1 – introductory part

*Text proposed by the Commission*

**Without prejudice to Commission Decision 2000/532/EC<sup>44</sup>**, the following shall be considered as waste and be disposed of without endangering human health or harming the environment in accordance with Directive 2008/98/EC:

*Amendment*

The following shall be considered as waste and be disposed of without endangering human health or harming the environment in accordance with Directive 2008/98/EC:

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<sup>44</sup> *Commission Decision 2000/532/EC of 3 May 2000 replacing Decision 94/3/EC establishing a list of wastes pursuant to Article 1(a) of Council Directive 75/442/EEC on waste and Council Decision 94/904/EC establishing a list of hazardous waste pursuant to Article 1(4) of Council Directive 91/689/EEC on hazardous waste (OJ L 226, 6.9.2000, p. 3).*

### Amendment 69

#### Proposal for a regulation

#### Article 12 – title

*Text proposed by the Commission*

Reporting on mercury waste **from large sources**

*Amendment*

Reporting on mercury waste

## *Justification*

*The measure for the reporting shall not be the size of the source but the size of the emissions and releases. The transfer of waste should also be included as well as the transfer of waste from the contaminated sites.*

### **Amendment 70**

#### **Proposal for a regulation**

##### **Article 12 – paragraph 1**

*Text proposed by the Commission*

1. The companies operating within the industry sectors referred to in points (a), (b) and (c) of Article 11 shall send each year by 31 May to the competent authorities of the Member States concerned data related to the total amount of mercury waste stored in each installation and sent to individual temporary *or permanent* storage facilities as well as the location and contact details of those facilities.

*Amendment*

1. The companies operating within the industry sectors referred to in points (a), (b) and (c) of Article 11 shall send each year by 31 May to the competent authorities of the Member States concerned data related to the total amount of mercury waste ***and the mercury content of such waste*** stored in each installation and sent to individual temporary storage facilities, ***conversion and solidification facilities and final disposal facilities*** as well as the location and contact details of those facilities.

### **Amendment 71**

#### **Proposal for a regulation**

##### **Article 12 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. By 30 June 2018, the Commission shall adopt delegated acts in accordance with Article 17, supplementing this Regulation by establishing a tracing tool in order to register information concerning the waste transfers from the contaminated sites. Where the threshold of total mercury and its compounds in waste produced exceeds 5 kg per year, the operator of the decontamination or the managing authority of the contaminated sites shall use that tracing tool and shall***

*communicate on a yearly basis the amount of mercury waste and its mercury content;*

## **Amendment 72**

### **Proposal for a regulation Article 12 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 12 a**

##### **Contaminated sites**

- 1. By... [one year after the date of entry into force of this Regulation], Member States shall identify the sites contaminated by mercury or mercury compounds within their territory, and communicate the list of those sites to the Commission and identify the nature of the contamination.**
- 2. By 30 June 2018, the Commission shall adopt delegated acts in accordance with Article 17 supplementing this Regulation by laying down methods and approaches for the ecologically sustainable management and remediation of sites contaminated by mercury or mercury compounds, which shall include:**
  - (a) engagement of the public;**
  - (b) assessment of human health and environmental risk;**
  - (c) decontamination measures, taking into account the different national approaches for decontamination;**
  - (d) evaluation of outcomes.**
- 3. By 1 January 2020, the Member States shall adopt and submit to the Commission their national strategies for the decontamination of the identified sites within their territory. Those strategies may be integrated into national decontamination strategies covering several substances.**

**4. By ... [18 months after the date of entry into force of this Regulation], the Commission shall set up an inventory of the sites contaminated by mercury or mercury compounds and by 1 June 2021 the national strategies shall also be included in the inventory. This information shall be publicly available including on the internet. The Commission shall monitor the implementation of the national strategies.**

## **Amendment 73**

### **Proposal for a regulation Article 13 – paragraph - 1 (new)**

*Text proposed by the Commission*

*Amendment*

**-1. Mercury waste shall be permanently disposed of - in an environmentally sound manner according to the Technical Guidelines of the Basel Convention - and according to the following conditions:**

**(a) prior to its disposal, the mercury waste is converted into mercury sulfide using the best available technology and solidified; and**

**(b) the mercury waste is disposed of in licenced salt mines that are adapted for the disposal of mercury waste, or in licenced deep underground hard rock formations that provide a level of safety and confinement equivalent to or higher than that of such salt mines. The mercury waste has been placed in disposal batches and placed in a storage disposal chamber that is sealed and not left open for more than six months; or**

**(c) the mercury waste is disposed of in licenced above-ground or in licenced subsurface facilities that are dedicated to and equipped for the permanent disposal of mercury waste and that provide a level**



*of safety and confinement equivalent to or higher than that of such salt mines; and*

*(d) the specific requirements for the temporary storage of mercury waste as laid down in the first, third, fifth and sixth indents of Section 8 of Annex I and in Annex II to Council Directive 1999/31/EC<sup>1a</sup> shall also apply to permanent disposal facilities for solidified mercury sulfide; and*

*(e) the specific requirements for the temporary storage of mercury waste as laid down in the second and fourth indents of Section 8 of Annex I and in Section 6 of Annex III to Directive 1999/31/EC shall apply to permanent disposal facilities for solidified mercury sulfide where deemed appropriate by the competent authorities of the Member States in charge of implementing that Directive.*

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<sup>1a</sup> *Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182, 16.7.1999, p. 1).*

## **Amendment 74**

### **Proposal for a regulation**

#### **Article 13 – paragraph - 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***-1a. By 31 December 2018, the Commission shall draw up a report assessing the safety of the various alternatives for the permanent disposal of mercury waste, including above-ground, subsurface and underground disposal. The report shall take into account the risks and benefits of all options. On the basis of the conclusions of the report, the Commission shall identify and present criteria concerning the permanent disposal of mercury waste. By 31 December 2019, the Commission shall,***

*where appropriate, submit legislative proposals in order to introduce those criteria in the Annexes to Directive 1999/31/EC and for the amendment of this Regulation.*

## Amendment 75

### Proposal for a regulation Article 13 – paragraph 1

*Text proposed by the Commission*

1. By way of derogation from point (a) of Article 5(3) of Directive 1999/31/EC, mercury waste may be stored in *one of the following ways*:

(a) *temporarily stored for more than one year or permanently stored in salt mines that are adapted for the disposal of mercury, or in deep underground hard rock formations providing a level of safety and confinement equivalent to that of those salt mines;*

(b) *temporarily stored in above-ground facilities dedicated to and equipped for the temporary storage of mercury.*

*Amendment*

1. By way of derogation from ***paragraph -1 and from point (a) of Article 5(3)*** of Directive 1999/31/EC, mercury waste may be *temporarily* stored in ***liquid form, while awaiting to be converted into mercury sulfide and solidified, for up to three years, after it becomes waste, subject to the specific requirements for the temporary storage of mercury waste as laid down in Annexes I, II and III to that Directive provided that such storage:***

(a) *occurs only in licenced above-ground facilities dedicated to and equipped for the temporary storage of mercury waste, in the proximity either of the last user of the mercury or the economic operator that will convert the mercury waste into mercury sulfide and solidify it; and*

(b) *is accompanied by a plan, including a timeframe, for this conversion to mercury sulfide, its solidification and the permanent disposal of the mercury waste.*

## Amendment 76

### Proposal for a regulation Article 13– paragraph 2

*Text proposed by the Commission*

2. The *specific requirements* for the

*Amendment*

2. The *operators of facilities*

temporary storage of mercury waste, as *laid down in Annexes I, II and III to Directive 1999/31/EC shall apply to the permanent storage facilities referred to in point (a) of paragraph 1 of this Article under the following conditions laid down in the following Annexes to that Directive:*

(a) *Annex I, Section 8 (first, third and fifth indents) and Annex II to Directive 1999/31/EC shall apply;*

(b) *Annex I, Section 8 (second, fourth and sixth indents) and Annex III, Section 6, to Directive 1999/31/EC shall only apply where deemed appropriate by the competent authorities of the Member States in charge of implementing that Directive.*

*undertaking the temporary storage or carrying out conversion into mercury sulfide and solidification of mercury waste shall, as part of the record-keeping required under Article 35 of Directive 2008/98/EC, keep a register containing the following information:*

(a) *for each shipment of mercury waste received:*

(i) *the origin and quantity of the mercury waste received;*

(ii) *the name and contact information of the supplier and the owner of the temporarily stored waste.*

(b) *for each shipment of converted mercury waste leaving the facility:*

(i) *the quantity of mercury waste that is converted into mercury sulfide and solidified and its mercury content;*

(ii) *the destination and the intended disposal operations for the mercury waste that is converted into mercury sulfide and solidified;*

(iii) *the certificate provided by the operator undertaking the permanent disposal of the mercury waste that is converted into mercury sulfide and solidified as referred to in paragraph 2a;*

(c) *for each shipment of mercury waste leaving the temporary storage facility:*

(i) *the amount of mercury waste and its mercury content;*

(ii) *the destination and intended disposal operation of the mercury waste;*

(iii) *the certificate provided by the operator undertaking the temporary storage of the mercury waste;*

*(d) the amount of mercury waste stored at the facility at the end of each month.*

*The operator of the facility shall transmit the register to the authority designated by the Member State concerned every year, by 31 January.*

## **Amendment 77**

### **Proposal for a regulation Article 13 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*2a. Once the disposal operation has been completed, facility operators responsible for the permanent disposal of mercury waste shall issue a certificate stipulating that the entire shipment of mercury waste has been disposed of permanently in accordance with the specific requirements for the permanent disposal of mercury waste as laid down in this Regulation and Directive 1999/31/EC. That certificate shall include information concerning the place of disposal.*

## **Amendment 78**

### **Proposal for a regulation Article 13 – paragraph 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*2b. Any type of incineration or co-incineration of mercury waste shall be prohibited.*

## **Amendment 79**

### **Proposal for a regulation**

**Article 13 – paragraph 2 c (new)**

*Text proposed by the Commission*

*Amendment*

**2c. Member States in which companies that offer conversion technology are established, shall promote the use of conversion of liquid mercury waste into mercury sulfide in third countries.**

**Amendment 80**

**Proposal for a regulation**

**Article 13 – paragraph 2 d (new)**

*Text proposed by the Commission*

*Amendment*

**2d. By 1 January 2019, the Commission shall create a tool to ensure the traceability of mercury waste throughout the chain and covering all parties involved, in accordance with this Regulation and the applicable Union law.**

**The tool shall log inflows and outflows of mercury waste for each party involved in the chain, particularly waste producers, waste collection operators, temporary storage operators, conversion facility operators and permanent disposal operators. The tool shall state the quantity of mercury waste held by each person or entity at all stages in the chain.**

**Amendment 81**

**Proposal for a regulation**

**Article 13 – paragraph 2 e (new)**

*Text proposed by the Commission*

*Amendment*

**2e. The Commission shall report to the European Parliament and the Council before 1 January 2019 on whether the period set out in paragraph 1 for the temporary storage of mercury waste needs**

*to be changed. The Commission shall, where appropriate, accompany this report with a legislative proposal.*

## **Amendment 82**

### **Proposal for a regulation Article 14 – paragraph 1**

#### *Text proposed by the Commission*

Member States shall lay down the rules on penalties applicable to infringements *of the provisions* of this Regulation and shall take all measures necessary to ensure that they are *applied*. The penalties provided for *must* be effective, proportionate and dissuasive. *The* Member States shall notify those *provisions to the Commission by [xxx]* and shall notify it without delay of any subsequent amendment affecting them.

#### *Amendment*

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are *implemented*. The penalties provided for *shall* be effective, proportionate and dissuasive. Member States shall, *by the date of application of this Regulation*, notify *the Commission of those rules and of those measures* and shall notify it, without delay, of any subsequent amendment affecting them.

#### *Justification*

*Environmental crime is a serious and growing problem that needs to be tackled at European level. Very often, environmental crimes have a cross border aspect. In the EU, environmental crime covers acts that breach environmental legislation and cause significant harm or risk to the environment and human health. The most known areas of environmental crime include the illegal emission or discharge of substances into air, water or soil or dumping of waste. The level of sanctions for specific environmental crimes differs greatly between Member States as well as between directives and regulations.*

## **Amendment 83**

### **Proposal for a regulation Article 15 – paragraph 1 – point b**

#### *Text proposed by the Commission*

(b) 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;

#### *Amendment*

(b) information needed for the fulfilment by the Union and by the Member States of its reporting obligation established under *Articles 8, 9 and* 21 of the Convention;

## Amendment 84

### Proposal for a regulation

#### Article 15 – paragraph 1 – point c

*Text proposed by the Commission*

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

*Amendment*

(c) a summary of the information gathered in accordance with Article 12 **and Article 13(2)**;

## Amendment 85

### Proposal for a regulation

#### Article 15 – paragraph 1 – point d

*Text proposed by the Commission*

(d) a list of **individual** stocks of mercury exceeding 50 metric tonnes, which are located in their territory **and, where Member States are made aware, a list of sources of mercury supply generating annual stocks of mercury exceeding 10 metric tonnes.**

*Amendment*

(d) a list of stocks **and sites** of mercury, **mercury compounds or mercury waste** exceeding **cumulatively** 50 metric tonnes, which are located in their territory, **as well as the amount** of mercury, **mercury compounds and mercury waste at each site**;

## Amendment 86

### Proposal for a regulation

#### Article 15 – paragraph 1 – point d a (new)

*Text proposed by the Commission*

*Amendment*

**(da) a list of sources of mercury supply generating annual stocks of mercury exceeding 10 metric tonnes.**

## Amendment 87

### Proposal for a regulation

## Article 15 – paragraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

***1a. Member States shall inform the Commission, via a public Union register, of the amounts and location of disposed mercury waste, and the assurances that these have been managed in an environmentally sound manner.***

***Any transfer of mercury and mercury compounds between industrial installations in a Member State shall be recorded by that Member State and reported to the Commission.***

## Amendment 88

### Proposal for a regulation

#### Article 15 – paragraph 2 – subparagraph 3

*Text proposed by the Commission*

*Amendment*

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.

The Commission shall adopt decisions, by means of implementing acts, to ***lay down*** a template for those questionnaires ***in order*** to make an electronic reporting tool available to the Member States.

## Amendment 89

### Proposal for a regulation

#### Article 15 a (new)

*Text proposed by the Commission*

*Amendment*

#### ***Article 15a***

***Reporting by the Commission and review***

***The Commission shall assess the alignment of this Regulation and of Directive 2010/75/EU of the European Parliament and of the Council<sup>1a</sup>, with Articles 8 and 9 of the Convention and the Convention's provisions related to the use of Best Available Techniques and best environmental practices to control***



*mercury releases from relevant mercury sources, such as the revised Best Available Techniques Reference Documents.*

*This assessment shall be communicated to the European Parliament and to the Council at the latest one month before the first Conference of the Parties to the Convention takes place, and at the latest on 7 January 2019 in accordance with Article 73(1) of Directive 2010/75/EU.*

*Within one year after the first Conference of the Parties to the Convention, the Commission shall re-assess if the Union legislation is aligned with the provisions adopted in the first Conference of the Parties, pursuant to Articles 8 and 9 as well as relevant revised Best Available Techniques Reference Documents of the Convention.*

*The Commission shall report to the European Parliament and to the Council on its findings in relation to these assessments and, if appropriate, accompany them by a legislative proposal.*

*The Commission shall, no later than 31 December 2025 carry out a review of this Regulation, inter alia in light of the developments in relation to the Convention and the implementation of this Regulation. If appropriate, the review shall be accompanied by a legislative proposal amending this Regulation. The review shall consider the possibility of including measures to reduce the use of mercury in industrial activities and of phasing out its use as quickly as possible and in any event within 10 years of the entry into force of the Convention.*

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*<sup>1a</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p.17).*

## **Amendment 90**

### **Proposal for a regulation**

#### **Article 15 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 15b**

##### **Crematoria**

***By 1 July 2018, the Commission shall submit to the European Parliament and the Council a report regarding mercury emissions from crematoria, to be accompanied, where appropriate, by a legislative proposal to significantly reduce such emissions.***

#### *Justification*

*Crematoria are an important source of mercury emissions into the environment. The Commission should assess the situation and make a legislative proposal to significantly reduce such emissions by 1 July 2018.*

## **Amendment 91**

### **Proposal for a regulation**

#### **Article 20 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

It shall apply from ***1<sup>st</sup> January 2018***.

It shall apply from ***the date of its entry into force***.

#### *Justification*

*The new obligations of the Member States related to this Regulation are very limited and all phasing outs have a realistic deadline in the future. There is no reason to have a different date of application from the date of entry into force.*

## **Amendment 92**

### **Proposal for a regulation**

## Annex I –point 1

<i>Text proposed by the Commission</i>	<i>Amendment</i>
Mercury compounds:	Mercury compounds:
Mercury (I) chloride (Hg <sub>2</sub> Cl <sub>2</sub> , CAS RN 10112-91-1)	Mercury (I) chloride (Hg <sub>2</sub> Cl <sub>2</sub> , CAS RN 10112-91-1)
Mercury (II) oxide (HgO, CAS RN 21908-53-2)	Mercury (II) oxide (HgO, CAS RN 21908-53-2)
Cinnabar ore	Cinnabar ore
	<b><i>Mercury (II) nitrate (Hg(NO<sub>3</sub>)<sub>2</sub>, CAS RN 10045-94-0)</i></b>
	<b><i>Mercury sulfide (HgS, CAS RN 1344-48-5)</i></b>
	<b><i>Mercury (II) sulfate (HgSO<sub>4</sub>, CAS RN 7783-35-9)</i></b>

## Amendment 93

### Proposal for a regulation Annex II – part A

*Text proposed by the Commission*

<b><i>Mercury-added products</i></b>
1. Batteries, <i>except for button zinc silver oxide batteries with a mercury content &lt; 2%, button zinc air batteries with a mercury content &lt; 2%.</i>
2. <i>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.</i>
3. <i>Compact fluorescent lamps (CFLs) for general lighting purposes that are ≤ 30 watts with a mercury content exceeding 5 mg per lamp burner.</i>
4. <i>The following linear fluorescent lamps (LFLs) for general lighting purposes:</i> (a) <i>Triband phosphor &lt; 60 watts with a mercury content exceeding 5 mg per lamp;</i> (b) <i>Halophosphate phosphor ≤ 40 watts with a mercury content exceeding 10 mg per lamp.</i>
5. <i>High pressure mercury vapour lamps (HPMV) for general lighting purposes.</i>

<p><b>6. The following mercury added cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFL and EEFL) for electronic displays:</b></p> <p>(a) <i>short length (<math>\leq 500</math> mm) with mercury content exceeding 3.5 mg per lamp;</i></p> <p>(b) <i>medium length (<math>&gt; 500</math> mm and <math>\leq 1\,500</math> mm) with mercury content exceeding 5 mg per lamp;</i></p> <p>(c) <i>long length (<math>&gt; 1\,500</math> mm) with mercury content exceeding 13 mg per lamp.</i></p>
<p>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<sup>1</sup></p>
<p>8. Pesticides, biocides and topical antiseptics.</p>
<p>9. The following non-electronic measuring devices where no suitable mercury-free alternative is available:</p>
<p>(a) barometers;</p>
<p>(b) hygrometers;</p>
<p>(c) manometers;</p>
<p>(d) thermometers;</p>
<p>(e) sphygmomanometers;</p>
<p>This entry does not cover the following measuring devices:</p>
<p>(a) non-electronic measuring devices installed in large-scale equipment or those used for high precision measurement;</p>
<p>(b) measuring devices more than 50 years old on 3 October 2007;</p>
<p>(c) measuring devices, which are to be displayed in public exhibitions for cultural and historical purposes.</p>

<sup>1</sup> 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).

*Amendment*

<b><i>Mercury-added products</i></b>	<b><i>Date as from which the export, import and manufacturing of the mercury-added products</i></b>
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<b><i>(e c) mercury metering devices for determination of the softening point;</i></b>
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 measurement <b><i>where no suitable mercury-free alternative is available;</i></b>
(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.

#### **Amendment 94**

##### **Proposal for a regulation Annex III – part 1 – point a**

*Text proposed by the Commission*

(a) from 1 January **2019: acetaldehyde production**

*Amendment*

(a) from 1 January **2018: where mercury is used as a catalyst,**

#### **Amendment 95**

##### **Proposal for a regulation Annex III – part 1 – point b**

*Text proposed by the Commission*

(b) **from 1 January 2019: vinyl chloride monomer production**

*Amendment*

(b) **from four years after the date of entry into force of this Regulation: where mercury is used as an electrode**

#### **Amendment 96**

##### **Proposal for a regulation Annex III – part 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

*(ba) By way of derogation from point (a) of Part I, the production of vinyl chloride monomer shall be allowed for a period of three years from ... [the date of entry into force of this Regulation].*

#### **Amendment 97**

**Proposal for a regulation**  
**Annex III – part 1 – point b b (new)**

*Text proposed by the Commission*

*Amendment*

*(bb) by way of derogation from point (b) of Part I, the production of potassium methylate or ethylate shall be allowed for a period of four years from ... [the date of entry into force of this Regulation].*

*The Commission is empowered to adopt delegated acts in accordance with Article 17 to amend this Regulation in order to extend the derogation for a period of maximum 10 years from ... [the date of entry into force of this Regulation], provided that no appropriate alternative techniques are available.*

#### **Amendment 98**

**Proposal for a regulation**  
**Annex III – part 1 – point b c (new)**

*Text proposed by the Commission*

*Amendment*

*(bc) by way of derogation from point (a) of Part I, from 10 October 2017: polyurethane using mercury containing catalysts.*

#### **Amendment 99**

**Proposal for a regulation**  
**Annex III – part 1 – point b d (new)**

*Text proposed by the Commission*

*Amendment*

*(bd) by way of derogation from point b of Part I, from 11 December 2017: for the*

*chlor-alkali production where mercury is used as an electrode.*

## **Amendment 100**

### **Proposal for a regulation Annex III – part 2 – introductory part**

*Text proposed by the Commission*

The production of sodium or potassium methylate or ethylate shall be carried out in accordance with the following requirements:

*Amendment*

The production of sodium or potassium methylate or ethylate shall be carried out in accordance with ***point (b) of Part I and*** the following requirements:

## **Amendment 101**

### **Proposal for a regulation Annex III – part 2 – indent 2 a (new)**

*Text proposed by the Commission*

*Amendment*

- ***supporting research and development in respect of mercury-free processes; and***

## **Amendment 102**

### **Proposal for a regulation Annex IV – point a**

*Text proposed by the Commission*

(a) national objectives and reduction targets;

*Amendment*

(a) national objectives and reduction targets ***ensuring a full elimination of the use of mercury and mercury compounds;***



## EXPLANATORY STATEMENT

### **Mercury one of the world's top 10 pollutants**

Scientific evidence incontestably proves the acute toxicity of Mercury, an element that can neither be destroyed nor disappear. With its immensely debilitating health impacts, mercury is among the world's top 10 worst pollutants.

According to the World Health Organisation (WHO), "there are no safe limits in respect to mercury". Thus, mercury emissions are the sort of problem that calls for ambitious and robust responses. But even with strong actions by governments, due to its bio accumulative properties, it would take decades for mercury pollution to be reduced in the global environment.

Since the industrial revolution, the amount of mercury near the surface of many of the world's oceans has tripled as the result of human polluting activities. Toxic to humans and marine life, mercury accumulates in our bodies over time as we are exposed to sources of it. Mercury emissions, which have no taste or smell, contaminate water and accumulate in fish.

Mercury can be widely dispersed across the globe when it is disposed into water and air, so even parts of the planet far from industrial sources can quickly suffer from elevated levels of the toxic material.

### **Exposure to mercury a widespread health problem**

Mercury exposure is a widespread health problem and may have toxic effects on the nervous, digestive and immune systems, and on lungs, kidneys, skin and eyes. Even small amounts of mercury can interfere with the nervous system. In the past 20 years mercury has been identified as an environmental hazard linked to Alzheimer's disease, multiple sclerosis, kidney and brain damage.

Mercury can change in the environment into a more complex and harmful compound called methylmercury. The EFSA Scientific Committee in its opinion of 2015<sup>1</sup> estimated how many servings of fish/sea food per week one would need to reach the Tolerable Weekly Intake (TWI) of methylmercury, which is established as the intake of 1.3µg/kg bw/week. Calculating that the servings are reported as below 100g, EFSA came into conclusion that age groups exceeding the TWI at the fewest numbers of servings were children up to 10 years old and in few cases of other children, adolescents, women of childbearing age, adults and elderly, the TWI was reached after less than and around 1 serving per week. On the other side of the Atlantic, in the United States, 84 percent of fish sampled were not safe for consumption for more than one meal (of 170g) per month, under US regulation. Likewise, more than 82 percent of the people studied contained mercury exceeding current health advisory levels. Over 13% of the fish sampled worldwide would not be recommended for commercial sale by the WHO and the European Commission.<sup>2</sup>

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<sup>1</sup> EFSA Journal 2015; 13(1):3982.

<sup>2</sup> Global Mercury Hotspots, Study by the Biodiversity Research Institute and IPEN; January 2013.

Methylmercury passes both the placental barrier and the blood-brain barrier, so it can inhibit children's mental development even before birth. And as the brain continues to develop also after birth, toddlers and children exposed to methylmercury above TWI on a regular basis should also be considered at risk for neurotoxic effect of methylmercury.

### **The Minamata Convention and the EU position**

It is therefore obvious how urgent the need is for the ratification of the legally binding Minamata Convention on mercury, which will regulate the supply, trade and use of the substance and go even further. Under the terms of this Treaty, governments will be encouraged to take measures to manage the health impacts of mercury exposure.

The overall goal of international cooperation under the Minamata process is to protect human health and the global environment from the release of mercury and its compounds, by diminishing and ultimately eliminating global human-induced releases to air, water and land. EU Regulation 1102/2008 paved the way for this International Treaty, and the current amending Regulation should continue to do so. The EU belongs to the Developed Countries Party, so according to your Rapporteur, the action undertaken by the EU and its Member States shall not be limited to applying the Minamata obligations to all countries who signed it. The EU in many cases has already transposed its obligations into EU law; it is one of the regions where alternative technologies exist and according to EU legislation, Best Available Techniques in different processes should apply. Additionally, the EU is in a much more privileged position to export good practices, technology, know-how, mercury-free products and especially the message that the use of mercury is harmful for the people, for the animals and the environment.

### **Possible alternative solutions to limit the widespread exposure of mercury**

Mercury is used, notably, in control equipment, products, industrial processes, in oral health as dental amalgam and in Artisanal, Small-scale Gold Mining (ASGM). Mercury can be produced by recycling waste materials; sometimes it is generated as a secondary product alongside the production of another material, such as zinc or tin or existing as a contaminant of fertilisers. Last but not least mercury can be released or emitted to air via contaminated sites, not in use any more but still major source of pollution if they haven't been decontaminated.

Since the entry into force of EU Regulation 1102/2008, the annual demand for mercury in the EU has fallen, but is still estimated at around 400 tonnes. Taking into consideration the bio-accumulative properties of mercury, the fact that "there are no safe limits in respect to mercury", that global use of mercury also remains high at about 3,600 tonnes per year and that pollution knows no borders, there is definitely room for further improvement. In this spirit, your rapporteur made his proposals, hoping that the Parliament gives the Commission a stronger mandate for further and more ambitious action in the future international negotiations.

Against this background your Rapporteur considers that it is of utmost importance that the EU takes determined action, so with his amendments he proposes to:

- A) Widen the scope of its mercury export ban by adding all products included in the Minamata Convention and by prohibiting the export of mercury-added products not allowed to be marketed in the EU. It is against the spirit of the Convention that the EU exports products not allowed in the EU to countries that possess neither the technology nor the capacities to treat their waste. The cases of India and China, which recently adopted the EU standards and limits, are indicative of the role the EU can play;
- B) Phase-out mercury use in dentistry, initially by prohibiting its use for pregnant women and children patients, and after the phase out period, the dental amalgam should be allowed only in specific, very restricted cases;
- C) Prohibit the industrial use of mercury as catalysts or electrodes, especially as available mercury-free technologies exist, used in EU and other parts of the world. Their use would be an incentive for industry to innovate and export its paradigm in the long run;
- D) The Member States to identify and clean all mercury-contaminated sites. It is paramount that contaminated sites are firstly identified and taken care of in an environmental sound manner, in order to stop polluting the nature, fauna and flora, and exposed populations, often already suffering from the economic consequences of the closure of those industries;
- E) The EU to reinforce the rules on environmentally sound treatment of mercury waste. Europe has the technology to treat mercury in the best available and least risky way known to this day, i.e. by solidification. A technology that will allow the solidification technology to travel from plant to plant and to the mercury sources is expected to enter the market soon. Liquid mercury will not be transported anymore long distances, limiting in this way all eventual risks, e.g. for the environment, for employees, of mercury entering the black market, of any eventual accident etc. With strict waste management requirements, the EU will safeguard as soon as possible that the mercury will not enter the market again or pollute the environment with every minor accident. At the same time, this will encourage innovation within the EU and the transfer of knowledge to third countries, which are less advantaged with regard to technological innovation;
- F) Ban any new mercury manufacturing processes and new mercury-added products, starting retrospectively, so as not to create any loopholes for products and processes that did not exist during the Minamata negotiations and at the time of the Commission's proposal and therefore were not regulated;
- G) Establish a comprehensive mercury tracking and reporting system, as the obligation for reporting nowadays covers only very high values and does not include waste transfers, which would be a big blind spot of missing data with the end of the chlor-alkali mercury production;
- H) Encourage and implement at EU level the use of all alternative mercury-free products and best techniques available for processes and waste management;
- I) To Member States and the Commission to take the necessary steps to raise public awareness and to increase transparency on the uses, transfers and releases of mercury.

The world needs Europe to continue to play a leading role in the Minamata process by fully exploiting all the Convention's potential and by fully respecting prior commitments under pre-existing EU mercury legislation. Your Rapporteur considers that any minimalist approach vis-à-vis Minamata would be counterproductive as well as contrary to public interest. Your Rapporteur would like that the EP stands for healthier environment, safer food and better health for all citizens.

## OPINION OF THE COMMITTEE ON LEGAL AFFAIRS ON THE LEGAL BASIS

Mr Giovanni La Via  
Chair  
Committee on the Environment, Public Health and Food Safety  
BRUSSELS

Subject: Opinion on the legal basis of the proposal for a Regulation of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008 (COM(2016)0039-2016/0023(COD))

Dear Mr Chair,

By letter of 30 August 2016, the Committee on the Environment, Public Health and Food Safety asked the Committee on Legal Affairs, pursuant to Rule 39(2) of the Rules of Procedure, to provide an opinion on the appropriateness of the legal basis for the proposal for a Regulation of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008<sup>1</sup>. The initial proposal is based on Article 192(1) of the Treaty on the Functioning of the European Union (TFEU) – on Union policy on the environment – and Article 207 TFEU – on common commercial policy. However, the rapporteur tabled an amendment which aims to change the legal basis to Article 192(1) TFEU exclusively.

### **I - Background**

The Union and twenty-six Member States signed a new International Convention on Mercury<sup>2</sup>, negotiated under the auspices of United Nations Environment Programme (UNEP), the so-called "Minamata Convention". All Member States are committed to ratifying the Convention. The Convention addresses the whole life-cycle of mercury, from primary mercury mining to the management of mercury waste, with the objective to protect human health and the environment from anthropogenic emissions of mercury and mercury compounds to air, water and land. Much of the Minamata Convention is already covered by Union legislation, and specifically Regulation (EC) No 1102/2008<sup>3</sup>, setting an export prohibition on mercury and on several mercury compounds; Regulation (EU) No 649/2012<sup>4</sup>, setting a notification system applicable *inter alia*, to imports of mercury; and Regulations

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<sup>1</sup> COM(2016) 39 final.

<sup>2</sup> Portugal and Estonia did not sign the Minamata Convention.

<sup>3</sup> Regulation (EC) No 1102/2008 of the European Parliament and of the Council of 22 October 2008 on the banning of exports of metallic mercury and certain mercury compounds and mixtures and the safe storage of metallic mercury (OJ L 304, 14.11.2008, p. 75).

<sup>4</sup> Regulation (EU) 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals (OJ L 201, 27.7.2012, p. 60).

(EC) 396/2005<sup>1</sup>, 1907/2006<sup>2</sup>, 1223/2009<sup>3</sup> and Directives 2006/66/EC<sup>4</sup> and 2011/65/EU<sup>5</sup>, addressing the placing on the Union market of a range of mercury-added products and setting maximum levels of mercury content. Finally, Directives 2010/75/EU<sup>6</sup>, 2012/18/EU<sup>7</sup>, 2008/98/EC<sup>8</sup> and 1999/31/EC<sup>9</sup> aim at controlling, reducing and, when mercury-free alternatives exist, eliminating point sources and diffuse emissions of mercury, mercury compounds and mercury waste into the environment.

According to the Commission proposal, the obligations resulting from the Convention that are not yet transposed into EU law should be integrated into a single legal act. For that purpose, Regulation (EC) No 1102/2008, as the only dedicated Union legal act on mercury to date, should serve as the basis for doing so. Yet, given the nature and extent of the necessary modifications to Regulation (EC) No 1102/2008 and the need to enhance consistency and legal clarity, such an act should repeal and replace the said Regulation while taking over its substantive obligations whenever still needed.

## **II - Relevant Treaty Articles**

Article 192(1) TFEU, in Part Three on Union policies and internal actions, in conjunction with Article 207 TFEU, in Part Five on the Union's External Action, are presented as the legal basis in the Commission's proposal and read as follows (emphasis added):

### ***Article 192*** (ex Article 175 TEC)

*1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall decide what action is to be taken by the Union in order to achieve the objectives referred to in Article 191.*

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<sup>1</sup> Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC (OJ L 70, 16.3.2005, p. 1).

<sup>2</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning 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, 30.12.2006, p. 1).

<sup>3</sup> 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).

<sup>4</sup> Directive 2006/66/EC of the European Parliament and of the Council of 6 September 2006 on batteries and accumulators and waste batteries and accumulators and repealing Directive 91/157/EEC (OJ L 266 of 26.9.2006, p. 1).

<sup>5</sup> 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 of 1.7.2011, p. 88).

<sup>6</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on Industrial Emissions (OJ L 334 of 17.12.2010, p. 17).

<sup>7</sup> Directive 2012/18/EU of the European Parliament and of the Council of 4 July 2012 on the control of major accident hazards involving dangerous substances, amending and subsequently repealing Council Directive 96/82/EC (OJ L 197 of 24.7.2012, p. 1).

<sup>8</sup> 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).

<sup>9</sup> Council Directive 1999/31/EC of 26 April 1999 on the landfill of waste (OJ L 182 of 16.7.1999, p. 1).

[...]

**Article 207**  
(ex Article 133 TEC)

*1. The common commercial policy shall be based on uniform principles, particularly with regard to changes in tariff rates, the conclusion of tariff and trade agreements relating to trade in goods and services, and the commercial aspects of intellectual property, foreign direct investment, the achievement of uniformity in measures of liberalisation, export policy and measures to protect trade such as those to be taken in the event of dumping or subsidies. The common commercial policy shall be conducted in the context of the principles and objectives of the Union's external action.*

*2. The European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall adopt the measures defining the framework for implementing the common commercial policy.*

[...]

Article 191 TFEU has the following wording (emphasis added):

**Article 191**  
(ex Article 174 TEC)

*1. Union policy on the environment shall contribute to pursuit of the following objectives:*

— preserving, protecting and improving the quality of the environment,

— protecting human health,

— prudent and rational utilisation of natural resources,

— promoting measures at international level to deal with regional or worldwide environmental problems, and in particular combating climate change.

[...]

*4. Within their respective spheres of competence, the Union and the Member States shall cooperate with third countries and with the competent international organisations. The arrangements for Union cooperation may be the subject of agreements between the Union and the third parties concerned.*

*The previous subparagraph shall be without prejudice to Member States' competence to negotiate in international bodies and to conclude international agreements.*

**III - The proposed legal basis**

Commission proposed Articles 192(1) and 207 TFEU as the appropriate legal basis for a Regulation on mercury, repealing Regulation (EC) No 1102/2008. As confirmed in the explanatory memorandum of the proposal, Commission considered that the similarities between Regulation 1102/2008 and the present proposal justify recourse to the same dual legal basis.<sup>1</sup>

In this light, it should be reiterated that the plenary of Parliament in the first reading of the proposal for Regulation 1102/2008 decided – following a recommendation by the Legal Affairs committee – that the appropriate legal basis was only Article 175(1) EC (now Art. 192(1) TFEU), since the fundamental purpose of the proposal was to protect human health and the environment, rather than to promote commercial policy considerations.<sup>2</sup>

The Court of Justice has considered questions concerning the choice of legal basis and the scope of Articles 192(1) and 207 TFEU respectively on a number of occasions.<sup>3</sup> What is more, it is settled case-law of the Court of Justice that (emphasis added):<sup>4</sup>

*‘the legal basis for an act must be determined having regard to **its own aim and content** and not to the legal basis used for the adoption of other Community (now Union) measures which might, in certain cases, display similar characteristics.’*

Following this principle, the appropriate legal basis for the present Commission proposal should be examined regardless of the legal basis used for the adoption of Regulation 1102/2008.

#### **IV - Case-law on legal basis**

The Court of Justice has traditionally viewed the question of the appropriate legal basis as an issue of constitutional significance, guaranteeing compliance with the principle of conferred powers (Article 5 TEU) and determining the nature and scope of the Union’s competence. According to settled case law of the Court of Justice, “*the choice of legal basis for a Community measure must rest on objective factors amenable to judicial review, which include in particular the aim and content of the measure*”.<sup>5</sup> The choice of an incorrect legal basis may therefore justify the annulment of the act in question. In this context, an institution’s wish for more active participation in the adoption of a given measure, the circumstances in which a measure was adopted as well as the work that has been done in other aspects within the scope of action covered by a given measure are irrelevant for the identification of the right legal basis.<sup>6</sup>

If examination of a measure reveals that it pursues a twofold purpose or that it has a twofold component one of which is identifiable as the main or predominant purpose or component, whereas the other is merely incidental, that measure must be based on a single legal basis,

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<sup>1</sup> COM(2016) 39 final, p. 9.

<sup>2</sup> Plenary report A6-0227/2007, p. 38.

<sup>3</sup> See in particular Opinion 2/00 EU:C:2001:664; as well as Cases C-281/01 *Commission v Council*, EU:C:2002:761, C-94/03 *Commission v Council*, EU:C:2006:2; C-178/03 *Commission v Parliament and Council*, EU:C:2006:4; and C-411/06 *Commission v Parliament and Council*, EU:C:2009:518.

<sup>4</sup> Case C-178/03 *Commission v Parliament and Council*, EU:C:2006:4, para. 55.

<sup>5</sup> Case C-45/86, *Commission v. Council* (Generalised Tariff Preferences) [1987] ECR 1439, para. 5; Case C-411/06 *Commission v. Parliament and Council* [2009] ECR I-7585.

<sup>6</sup> Case C-269/97 *Commission v Council* [2000] ECR I-2257, para 44.

namely that required by the main or predominant purpose or component.<sup>1</sup> However, where a measure has several contemporaneous objectives or components, which are indissociably linked, without one being secondary and indirect in relation to the other(s), such a measure will have to be based on the various corresponding legal bases,<sup>2</sup> if procedures laid down for the respective legal bases are not incompatible with and do not undermine the right of the European Parliament.<sup>3</sup>

## **V. Aim and content of the proposed measure**

The aim of this Proposal, as stated by the Commission in its explanatory memorandum and recitals 7 and 9, is to ensure the full alignment of Union legislation with the Minamata Convention via the integration into a single legal act of all obligations resulting from the Convention that are not yet transposed into EU law.<sup>4</sup>

Along these lines, recital 1 of the Commission proposal reiterates that “mercury is a highly toxic substance which represents a global and major threat to human health”; recital 3 recalls the seventh Environment Action Programme establishing the long-term objective of a non-toxic environment and the minimisation of significant adverse effects of chemicals on human health and the environment by 2020.<sup>5</sup> Recital 6 refers to the Community Strategy Concerning Mercury,<sup>6</sup> which provides for the negotiation and conclusion of an international legally-binding instrument as Union action alone cannot guarantee effective protection of the citizens of the Union against the negative health effects of mercury. Finally, pursuant to recital 24, the objective of this Regulation is to ensure a high level of protection of human health and the environment from mercury, by means of mercury and mercury-added product export and import prohibition, of restrictions on mercury use in manufacturing processes, products, ASGM and dental amalgam and of obligations applicable to mercury waste.

Article 1 of the proposed Regulation defines the subject matter of the Regulation as being the establishment of measures and conditions concerning trade, manufacture, use and interim storage of mercury and the management of mercury waste. Article 2 contains definitions, including of terms ‘export’ and ‘import’. Article 3 introduces export restrictions for mercury and mercury compounds, whereas Article 6 introduces import restrictions. According to Article 5 the export, import and manufacturing in the Union of the mercury-added products as set out in Annex II shall be prohibited by 1st January 2021, whereas Article 6 introduces the possibility for the Commission to adopt implementing acts for the purpose of implementing Articles 3 and 4. Articles 7-10 introduce restrictions on the use and storage of mercury, including industrial activities, new manufacturing processes, artisanal and small-scale gold mining and dental amalgam. Finally, Articles 11-13 contain provisions on the storage and disposal of mercury waste.

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<sup>1</sup> Case C-137/12 *Commission v Council* EU:C:2013:675, para. 53; C-490/10 *Parliament v Council* EU:C:2012:525, para. 45; C-155/07 *Parliament v Council* [2008] ECR I-08103, para. 34.

<sup>2</sup> Case C-211/01 *Commission v Council* [2003] ECR I-08913, para. 40; Case C-178/03 *Commission v European Parliament and Council* [2006] ECR I-107, paras 43-56.

<sup>3</sup> Case C-300/89 *Commission v Council* ("Titanium dioxide") [1991] ECR I-2867, paras. 17-25; Case C-268/94 *Portugal v Council* [1996] ECR I-6177.

<sup>4</sup> Minamata Convention on Mercury concluded under the auspices of the United Nations Environment Programme, <http://www.mercuryconvention.org/>.

<sup>5</sup> OJ L354, 28.12.2013, p.171.

<sup>6</sup> COM(2010) 723 final.



## **VI - Determination of the appropriate legal basis**

Taking into account that the primary aim of this proposal is to fully align Union legislation with the Minamata Convention, the purpose of the convention itself is essential in order to determine whether the proposal simultaneously pursues the two objectives of environmental protection and trade or whether one of them is merely incidental.

As far as the aim and content of the Minamata Convention is concerned, Article 1 provides that “[t]he objective of this Convention is to protect the human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds”. Against this background, the preamble indicates that the measures set out to meet that objective “include measures to control the supply and trade of mercury, including setting limitations on certain specific sources of mercury such as primary mining, and to control mercury-added products and manufacturing processes in which mercury or mercury compounds are used, as well as artisanal and small scale gold mining”.<sup>1</sup>

Although the Minmata Convention provides for export and import restrictions concerning mercury, it is predominantly concerned with the protection of the health and environment. This is confirmed also by the choice of Article 192(1) TFEU as the sole legal basis for the Commission proposal for a Council Decision on the conclusion of the Minamata Convention on Mercury.<sup>2</sup> According to the opinion of the Legal Service:<sup>3</sup>

*‘Considering, that (a) the proposal aims to implement certain obligations under the Minamata Convention, (b) the environmental purpose of the latter is clear from the preamble thereto, and (c) another Commission proposal put forward for a Council Decision on the conclusion of the Minamata Convention is based on Article 192(1) TFEU, the proposed Regulation should a priori also be based on the same legal basis on grounds of consistency.’<sup>4</sup>*

Against this background, it could be argued that despite the existence of a series of articles of the proposal concerning restrictions touching upon trade, considering the overarching aim of the proposed Regulation as well as the series of recitals setting it within the context of the broader Union policy on environment– as exemplified in the seventh Environmental Action Programme and the Community Strategy Concerning Mercury – the environmental component of the proposal is clearly discernible and predominant. In the Legal Service’s opinion (emphasis added):<sup>5</sup>

*‘[E]ven the provisions pertaining to export and import are not genuinely aimed at promoting, facilitating or governing commercial trade, or at defining those characteristics of materials and products which would enable them to circulate freely as part of commercial trade with third countries. Rather, the bans and restrictions are*

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<sup>1</sup> Ibid, at 4.

<sup>2</sup> COM (2016) 42 final, p. 4.

<sup>3</sup> SJ-0393/16, p. 4.

<sup>4</sup> Cf. a similar argument in Case C-411/06 *Commission v Parliament and Council*, EU:C:2009:518, paragraph 66.

<sup>5</sup> SJ-0393/16, p. 4-5.

*set out in order to secure the protection of the environment.<sup>1</sup> Under this angle trade restrictions clearly serve the environmental purpose of the proposal. Accordingly, the environmental component seems to be predominant and defines the centre of gravity of the proposal.*

## **VII - Conclusion and recommendation**

In light of the foregoing, since the Commission proposal – though containing import and export restrictions – pursues as its primary objective the protection of environment and human health, Article 192(1) TFEU constitutes the sole valid and appropriate legal basis for the proposal.

At its meeting of 26 September 2016 the Committee on Legal Affairs accordingly decided unanimously, by 22 votes in favour<sup>2</sup>, to recommend to the Committee on the Environment, Public Health and Food Safety to change the legal basis of the proposed Regulation of the European Parliament and of the Council on Mercury, and repealing Regulation (EC) No 1102/2008 to Article 192(1) TFEU exclusively.

Yours sincerely,

Pavel Svoboda

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<sup>1</sup> Cf. Case C-411/06 *Commission v Parliament and Council*, EU:C:2009:518, paragraphs 69 to 72.

<sup>2</sup> The following were present for the final vote: Jean-Marie Cavada (acting Chair, rapporteur), Mady Delvaux (Vice-Chair), Axel Voss (Vice-Chair), Joëlle Bergeron, Marie-Christine Boutonnet, Daniel Buda, Sergio Gaetano Cofferati, Pascal Durand, Angel Dzhambazki, Kostas Chrysogonos, Rosa Estaràs Ferragut, Sajjad Karim, Sylvia-Yvonne Kaufmann, Dietmar Köster, Gilles Lebreton, António Marinho e Pinto, Stefano Maullu, Emil Radev, Evelyn Regner, Virginie Rozière, József Szájer, Tadeusz Zwiefka.

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Regulation on mercury and repealing Regulation (EC) No 1102/2008		
<b>References</b>	COM(2016)0039 – C8-0021/2016 – 2016/0023(COD)		
<b>Date submitted to Parliament</b>	2.2.2016		
<b>Committee responsible</b> Date announced in plenary	ENVI 4.2.2016		
<b>Committees asked for opinions</b> Date announced in plenary	INTA 4.2.2016	ITRE 4.2.2016	JURI 4.2.2016
<b>Not delivering opinions</b> Date of decision	INTA 13.7.2016	ITRE 23.2.2016	JURI 15.3.2016
<b>Rapporteurs</b> Date appointed	Stefan Eck 10.3.2016		
<b>Legal basis disputed</b> Date of JURI opinion	JURI 26.9.2016		
<b>Discussed in committee</b>	12.7.2016		
<b>Date adopted</b>	13.10.2016		
<b>Result of final vote</b>	+: 55 -: 9 0: 1		
<b>Members present for the final vote</b>	Marco Affronte, Margrete Auken, Pilar Ayuso, Zoltán Balczó, Catherine Bearder, Ivo Belet, Nessa Childers, Birgit Collin-Langen, Mireille D’Ornano, Miriam Dalli, Angélique Delahaye, Stefan Eck, Bas Eickhout, Eleonora Evi, José Inácio Faria, Karl-Heinz Florenz, Francesc Gambús, Elisabetta Gardini, Gerben-Jan Gerbrandy, Jens Gieseke, Julie Girling, Sylvie Goddyn, Françoise Grossetête, Anneli Jäätteenmäki, Jean-François Jalkh, Josu Juaristi Abaunz, Karin Kadenbach, Kateřina Konečná, Giovanni La Via, Peter Liese, Norbert Lins, Susanne Melior, Miroslav Mikolášik, Massimo Paolucci, Bolesław G. Piecha, Frédérique Ries, Michèle Rivasi, Daciana Octavia Sârbu, Annie Schreijer-Pierik, Davor Škrlec, Renate Sommer, Dubravka Šuica, Tibor Szanyi, Claudiu Ciprian Tănăsescu, Jadwiga Wiśniewska, Damiano Zoffoli		
<b>Substitutes present for the final vote</b>	Guillaume Balas, Paul Brannen, Nicola Caputo, Michel Dantin, Mark Demesmaeker, Luke Ming Flanagan, Elena Gentile, Martin Häusling, Krzysztof Hetman, Gesine Meissner, James Nicholson, Marijana Petir, Gabriele Preuß, Christel Schaldemose, Jasenko Selimovic, Mihai Țurcanu		
<b>Substitutes under Rule 200(2) present for the final vote</b>	Nicola Danti, Anna Hedh, Marco Zullo		
<b>Date tabled</b>	20.10.2016		