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COMMISSION

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Proposal for a

COUNCIL DECISION

on the position to be taken on behalf of the European Union at the sixth meeting of the Conference of the Parties to the Minamata Convention on Mercury as regards the adoption of decisions amending that Convention on mercury-added products and manufacturing processes in which mercury or mercury compounds are used

EXPLANATORY MEMORANDUM

1. SUBJECT MATTER OF THE PROPOSAL

This proposal concerns the decision establishing the position to be taken on the European Union's ('EU') behalf, at the sixth meeting of the Conference of the Parties ('COP6') to the Minamata Convention on Mercury ('the Agreement') regarding the envisaged adoption of decisions on the trade of mercury compounds and amending Annexes A and B to the Agreement. These Annexes set out a list of mercury-added products and a list of manufacturing processes that use mercury or mercury compounds ('mercury processes'), subject either to phase-out dates or to provisions regulating mercury use[1].

2. CONTEXT OF THE PROPOSAL

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

The Agreement is the main international legal framework for protecting human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds into the air, water and land. It addresses the whole life-cycle of mercury, from primary mercury mining to mercury waste disposal. It entered into force on 16 August 2017. The European Union is a Party to the Agreement[2]. All Member States are also Parties.

In accordance with Article 3, paragraph 13 of the Agreement requires the Conference of the Parties ('COP') to evaluate whether the trade in specific mercury compounds comprises the objective of the Agreement and to consider whether specific mercury compounds should, by their listing in a new additional annex in accordance with Article 27 of the Agreement, be made subject to paragraphs 6 and 8 of Article 3 of the Agreement.

In accordance with Article 3, paragraph 6 of the Agreement, "each Party shall not allow the export of mercury except to a Party that has provided the exporting Party with its written consent or to a non-Party that has provided the exporting Party with its written consent".

Pursuant to Article 3, paragraph 8 of the Agreement, "each Party shall not allow the import of mercury from a non-Party to whom it will provide its written consent unless the non-Party has provided certification that the mercury is not from sources identified as not allowed under paragraph 3 or 5(b)".

Pursuant to Article 4, paragraph 1 of the Agreement, the mercury-added products listed in Part I to Annex A (e.g. certain compact fluorescent lamps) can no longer be manufactured, imported or exported after the phase-out dates specified therein.

In accordance with Article 4, paragraph 3, Parties shall take measures to regulate mercury use in respect of the mercury-added products listed in Part II to Annex A.

In accordance with Article 5, paragraph 2, the mercury processes listed in Part I of Annex B (e.g. chlor-alkali production) must no longer involve the use of mercury or mercury compounds by the phase-out dates set therein.

Pursuant to Article 5, paragraph 3, Parties shall take measures to regulate mercury use in the mercury processes listed in Part II of Annex B, including in terms of conversion to mercury-free processes, when economically and technically feasible.

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[1] For the purpose of this document, the expression 'regulating mercury use' covers generic requirements such as those established in Parts II of Annexes A and B to the Agreement.

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

Articles 26 and 27 set the basic rules regarding, inter alia, the submission by the Parties of proposals for amending the Annexes to the Agreement, as well as for the adoption and entry into force of the amended Annexes. Proposals for amending the Annexes must be communicated to all Parties by the Secretariat of the Agreement ('the Secretariat') at least six months before the COP at which it is proposed for adoption. Proposed amended Annexes are adopted in accordance with the voting rules set out in Article 26, paragraph 3 and in Decision MC-1/1 on Rules of Procedures adopted by the COP at its first meeting (24-29 September 2017)[3]. The Secretariat has not received any such proposal for consideration at COP6.

However, the COP decided in Decision MC-5/4 to consider at COP6 a proposal to amend Parts I and II of Annex A with regard to dental amalgam. The proposed text contained in that decision resulted from the consideration by the COP of the original proposal, which had been submitted by Botswana and Burkina Faso on behalf of the Africa region and which was communicated to the Parties on 27 April 2023, six months before COP5.

Decision MC-5/6 was adopted at COP5. This decision invited the Parties and relevant organisations to voluntarily submit, by 31 March 2025, information on technically and economically feasible alternatives to the use of mercury and mercury compounds in vinyl chloride monomer production, in accordance with Article 5, paragraph 8 and Article 17, paragraph 1 of the Agreement.

An amendment to an Annex enters into force for all Parties one year after the Agreement's depository communicates its adoption, except for those Parties that have made a relevant declaration in accordance with Article 30, paragraph 5. The Union has not made such a declaration, so the general rule on the entry into force of amended or new Annexes applies to it.

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

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

According to Article 28 of the Agreement and the above-mentioned Decision MC-1/1, each Party has one vote. However, the Union, as a regional economic integration organisation, exercises its right to vote, on matters within its competence, with a number of votes equal to the number of its Member States that are Parties to the Agreement. The Union shall not exercise its right to vote if any of its Member States exercises its right to vote, and vice versa.

2.3. Potential decisions at COP6

COP6 is expected to adopt a decision on the supply and trade of mercury compounds.

COP6 will also consider adopting a decision related to the trade in mercury compounds. The envisaged act could establish an additional annex to the Agreement that would list mercury compounds that would be made subject to written consent procedures pursuant to Article 3, paragraphs 6 and 8 of the Agreement. The list of mercury compounds that could be listed includes:

[3] Decision MC-1/1, *Rules of procedure*, UNEP/MC/COP1/Dec. 1 (available at: http://www.mercuryconvention.org/Meetings/COP1/Decisions/tabid/8648/language/en-US/Default.aspx).

(1) mercury (I) chloride

(2) mercury (II) sulphide

(3) cinnabar

(4) mercury (II) oxide

(5) mercury (II) sulphate

(6) mercury (II) nitrate

(7) mercury (II) acetate

(8) mercury (II) chloride

(9) mercury (II) iodide

(10) mercury (II) amidochloride

COP6 is also expected to adopt one or more decisions to amend Annexes A and B to the Agreement.

Firstly, COP6 will consider the proposed amendments to **Part I of Annex A**, with a view to adopting a decision thereon, as appropriate. The amendments would remove the brackets around the entry on **dental amalgam** as well as the corresponding phase-out date (2030). The entry would therefore be subject either to a manufacturing, import and export prohibition at specified phase-out dates or to measures regulating mercury use. COP6 will also consider the proposal to further amend **Part II of Annex A** by adding additional provisions on dental amalgam.

Secondly, COP6 will consider adopting a decision, as appropriate, based on the Secretariat's final report on challenges preventing the manufacture, import and export of **cosmetics** listed in **Part I of Annex A** as well as on current or proposed measures taken by Parties to address those challenges.

Thirdly, COP6 will consider an amendment to Annex B to establish that mercury-free catalysts based on existing processes have become technically and economically feasible and benefit human health and the environment. This would trigger an automatic phase-out date no later than five years after COP6 (i.e. by 2030) with a view to adopting a decision, as appropriate. This amendment is based on the Secretariat's report on the technical and economic feasibility of mercury-free catalysts in vinyl chloride monomer ('VCM') production, which is based on information submitted by Parties and relevant organisations and set out in document UNEP/MC/COP.6/INF/9.3.Position to be taken on the Union's behalf

3. Position to be taken on the Union's behalf

The objective of the Union is to phase-out mercury use at Union and global level, as rapidly and as completely as possible where viable alternatives exist[4]. The achievement of this objective will in particular require the phasing-out of mercury-added products and the conversion of mercury processes into non-mercury processes when this is viable, technically feasible and beneficial to human health and the environment.

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

Progress at global level towards achieving this objective would contribute to the Zero Pollution ambition for a toxic-free environment that was set out in the European Green Deal[5]. It would also contribute to implementing the 2020 EU Chemical Strategy for Sustainability[6] in which the European Commission made a commitment to maintain a leading role at the international level concerning the sound management of chemicals, including by promoting EU standards globally. It would also be in line with the EU's revamped ambitions for clean and circular competitiveness, as enshrined, inter alia, in the Clean Industrial Deal[7] and the Water Resilience Strategy[8].

Supply and trade of mercury compounds

The position to be taken on the Union's behalf at COP6 shall consist in supporting the adoption of an additional annex to the Agreement, listing mercury compounds subject to written consent in accordance with Article 3, paragraphs 6 and 8 of the Agreement, where this is consistent with the Union *acquis* (i.e. listing mercury compounds which are already subject to an export prohibition under Annex III of the Mercury Regulation).

The position to be take on the Union's behalf is based on the fact that the Mercury Regulation[9] prohibits the export of certain mercury compounds, in accordance with Annex III on mercury compounds subject to Article 3, paragraphs 2 and 3 and Article 7, paragraph 3. The mercury compounds subject to an export prohibition include:

- mercury (I) chloride (Hg2Cl2, CAS RN 10112-91-1)
- mercury (II) oxide (HgO, CAS RN 21908-53-2)
- cinnabar ore
- mercury sulfide (HgS, CAS RN 1344-48-5)
- mercury (II) sulphate (HgSO4, CAS RN 7783-35-9)
- mercury (II) nitrate (Hg(NO3)2, CAS RN 10045-94-0)

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

The Union's position at COP6 shall consist in supporting the adoption of the envisaged act which is consistent with the Union *acquis* or mercury-added products that are already banned from being placed on the Union market, and that can be replaced with mercury-free alternatives that have been proven to be economically and technically feasible as well as beneficial from the environmental and human health perspective.

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5 Communication from the Commission of 11 December 2019 to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *The European Green Deal*, COM(2019) 640 final.

6 Communication of the Commission of 14 October 2020 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Chemicals Strategy for Sustainability Towards a Toxic-Free Environment*, COM(2020) 667 final.

7 Communication from the Commission of 26 February 2025 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *The Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation*, COM(2025) 85 final.

8 Communication from the Commission of 4 June 2025 to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *European Water Resilience Strategy*, COM(2025) 280 final.

9 Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on mercury, and repealing Regulation (EC) No 1102/2008 (OJ L 137, 24.5.2017, p. 1).

The Union's position is based on the following two elements.

Article 10, paragraph 7 of the revised Mercury Regulation prohibits the use and export from the EU of dental amalgam. The import and manufacture of dental amalgam is prohibited from 1 July 2026. By way of derogation, the import and manufacturing of dental amalgam is allowed for patients' specific medical needs.

Annex II of the Mercury Regulation prohibits the export, import and manufacture of cosmetics with mercury and mercury compounds, except in those special cases included in entries 16 and 17 of Annex V to the Cosmetics Regulation[10].

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

The position to be taken on the Union's behalf at COP6 shall be to support the adoption of the envisaged act to introduce a phase-out date for VCM and to strengthen provisions regulating mercury use by adding, in particular, a duty not to increase production capacities by the relevant phase-out date.

This position to be taken on the Union's behalf is based on the following three points.

Union law (particularly Article 7, paragraphs 1 and 3, and Annex III to the Mercury Regulation) has transposed Article 5, paragraphs 2 and 3, and Annex B to the Agreement more strictly.

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

Annex III to the Mercury Regulation sets several derogating phase-out dates for VCM, alcoholates and polyurethane production, but those provisions are stricter than Annex B to the Agreement. Whereas the Mercury Regulation has prohibited mercury use for VCM production since 1 January 2022, the Agreement only restricts mercury use and specifies that the Parties aim at phasing out this use five years after the COP has determined that mercury-free alternatives have become technically and economically feasible (VCM). The review of Annex B provides an opportunity to narrow the gap between the currently stricter Union law and the less strict Agreement. This would be achieved by adding to Annex B phase-out dates for VCM production using mercury, in compliance with the Union *acquis* and taking account of existing available technically and economically feasible mercury-free alternatives processes.

[10] 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).

4. LEGAL BASIS

4.1. Procedural legal basis

4.1.1. Principles

Article 218(9) of the Treaty on the Functioning of the European Union (TFEU) regulates decisions establishing 'the positions to be adopted on the Union's behalf in a body set up by an agreement, when that body is called upon to adopt acts having legal effects, with the exception of acts supplementing or amending the institutional framework of the agreement'.

The concept of 'acts having legal effects' includes acts that have legal effects by virtue of the rules of international law governing the body in question. It also includes instruments that do not have a binding effect under international law but are 'capable of decisively influencing the content of the legislation adopted by the EU legislature'[11].

4.1.2. Application to the present case

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

The acts which the COP is called upon to adopt concern the possible adoption of a new Annex to the Minamata Convention on Mercury, as well as the possible amendment of two existing Annexes. Given that, pursuant to Article 27, paragraph 1 of the Minamata Convention on Mercury, the Annexes form an integral part of the Convention, the envisaged acts are acts that have legal effects because they are legally binding on the Parties pursuant to international law.

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

The procedural legal basis for the proposed decision is therefore Article 218(9) TFEU.

4.2. Substantive legal basis

4.2.1. Principles

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

4.2.2. Application to the present case

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

The substantive legal basis of the proposed decision is therefore Article 192(1) TFEU.

4.3. Conclusion

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

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

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THE COUNCIL OF THE EUROPEAN UNION

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

Having regard to the proposal from the European Commission,

Whereas:

(1) The Minamata Convention on Mercury[12] ('the Agreement') was concluded by the Union by Council Decision (EU) 2017/939[13] and entered into force on 16 August 2017.

(2) Pursuant to Article 27 in conjunction with Article 26 of the Agreement, the Conference of the Parties may adopt decisions adopting new Annexes to the Agreement and amending its existing Annexes.

(3) The Conference of the Parties, during its 6th meeting on 3-7 November 2025, may adopt a new Annex to the Agreement, listing mercury compounds subject to written consent for export, in accordance with Article 3, paragraphs 6 and 8 of the Agreement.

(4) In addition, the Conference of the Parties to the Agreement is expected to adopt one or more decisions to amend Annexes A and B to the Agreement. Annex A contains a list of mercury-added products that are subject either to a manufacturing, import and export prohibition at a specified date or to mercury-regulating measures. Annex B contains a list of manufacturing processes using mercury or mercury compounds ('mercury processes') that are subject to an obligation to cease mercury use on a specific date or to mercury-regulating requirements.

(5) The envisaged acts of the Conference of the Parties will have legal effects.

(6) It is necessary to establish the position to be taken on the Union's behalf in the Conference of the Parties to the Agreement.

(7) The Union should support the adoption of decisions by the Conference of the Parties to the Agreement that make it possible to narrow the gap between Union law and the Agreement and that are consistent with the Union *acquis* regarding:

[12] Certified copy of the Minamata Convention on Mercury available at: https://treaties.un.org/doc/Treaties/2013/10/20131010%2011-16%20AM/CTC-XXVII-17.pdf.

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

(11) The export of mercury compounds that have already been addressed under Regulation (EU) 2017/852[14].

(12) The prohibition of dental amalgam whilst maintaining the exemption for dental amalgam necessary for specific medical needs, in consistency with Article 10, paragraph (2a) of Regulation (EU) 2017/852 on mercury.

(13) The prohibition of mercury processes already prohibited under Regulation (EU) 2017/852 on mercury by specified dates or made subject to stricter requirements regulating mercury use.

HAS ADOPTED THIS DECISION:

Article 1

The position to be taken on the Union's behalf in the sixth meeting of the Conference of the Parties to the Agreement shall be to support the adoption of:

(i) a decision establishing a new Annex to the agreement listing mercury compounds subject to export restriction in accordance with Article 3, paragraphs (6) and (8) of the Agreement;

(ii) decisions amending Annex A consistent with the Union *acquis* on dental amalgam and cosmetics;

(iii) a decision amending Annex B to ensure that mercury processes that are already prohibited under Regulation (EU) 2017/852 on mercury are phased out by specified dates or made subject to stricter requirements regulating mercury use.

Article 2

Minor technical changes to the position referred to in Article 1 may be agreed upon and without a further decision of the Council.

Article 3

This Decision enters into force on the date of its adoption.

Done at Brussels,

For the Council
The President

[14] Regulation (EU) 2017/852 of the European Parliament and of the Council of 17 May 2017 on Mercury and repealing Regulation (EC) No 1102/2008 (OJ L 137, 24.05.2017, p. 1).