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 (Text with EEA relevance)

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Mercury is a very toxic substance which represents a global and major threat to human health, including in the form of methylmercury in fish and seafood resources, 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 the Union. Action is therefore warranted at local, regional, national and international levels.

(2) Most mercury emissions and associated exposure risks result from anthropogenic activities such as primary mercury mining and processing, the use of mercury in products and industrial processes, artisanal and small-scale gold mining and processing, coal combustion and the management of mercury waste.

(3) The Seventh Environment Action Programme adopted by Decision No 1386/2013/EU of the European Parliament and of the Council[(3)] establishes the long-term objective of a non-toxic environment and, for that purpose, stipulates that action is needed to ensure the minimisation of significant adverse effects of chemicals on human health and the environment by 2020.

(4) The Communication of 28 January 2005 from the Commission to the European Parliament and the Council entitled ‘Community Strategy Concerning Mercury’, as reviewed on 7 December 2010 (‘the Strategy’), aims at minimising and, where feasible, ultimately eliminating global anthropogenic mercury releases to air, water and land.

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) 2017/852 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(5) In the past 10 years, significant progress has been achieved in the Union 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.

(6) The Strategy recommends that the negotiation and conclusion of an international legally-binding instrument on mercury 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.

(7) The Union and 26 Member States have signed the Minamata Convention on Mercury of 2013 ('the Convention'). The two Member States that did not sign the Convention, Estonia and Portugal, have expressed their commitment to ratify it. The Union and all its Member States are therefore committed to its conclusion, transposition and implementation.

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

(9) This Regulation should complement the Union *acquis* and lay down the provisions that are needed to ensure the complete alignment of the Union *acquis* with the Convention so that the Union and its Member States are able to respectively approve or ratify and implement the Convention.

(10) Further action undertaken by the Union, going beyond the Convention requirements, would lead the way, as was the case with Regulation (EC) No 1102/2008 of the European Parliament and of the Council[(4)], for mercury-free products and processes.

(11) In accordance with Article 193 of the Treaty on the Functioning of the European Union (TFEU), this Regulation does 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 thereof.

(12) The mercury export ban laid down in Regulation (EC) No 1102/2008 should be complemented by restrictions on the import of mercury which vary depending on the source, the intended use and the place of origin of the mercury. Regulation (EC) No 1013/2006 of the European Parliament and of the Council[(5)] should continue to apply as regards imports of mercury waste, particularly as regards the powers of the competent authorities under that Regulation.

(13) The provisions of this Regulation on the import of mercury and of mixtures of mercury are aimed at ensuring the fulfilment by the Union and the Member States of the obligations of the Convention concerning trade of mercury.

(14) The export, import and manufacturing of a range of mercury-added products accounting for a significant share of the use within the Union and globally of mercury and mercury compounds should be prohibited.

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) 2017/852 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

(15) This Regulation should apply without prejudice to the provisions of the applicable Union *acquis* that set stricter requirements for mercury-added products, including as regards maximum mercury content.

(16) The use of mercury and mercury compounds in manufacturing processes should be phased out and, to that end, incentives should be provided for research into alternative substances with characteristics that are innocuous, or, in any event, less dangerous for the environment and for human health.

(17) Regulation (EC) No 1907/2006 of the European Parliament and of the Council[(6)] prohibits, as from 10 October 2017, the manufacture, placing on the market and use of the five phenylmercury compounds known to be used, especially as catalysts, in the production of polyurethane. The use of other mercury-containing catalysts in polyurethane production should also be prohibited as from 1 January 2018.

(18) The production of alcoholates involving the use of mercury as an electrode should be phased out and such manufacturing processes should be replaced by feasible mercury-free manufacturing processes as soon as possible. In the absence of relevant available mercury-free manufacturing processes, operating conditions for the production of sodium or potassium methylate or ethylate involving the use of mercury should be laid down. Measures should be taken to reduce the use of mercury so as to phase out its use in such production as soon as possible and in any event before 1 January 2028.

(19) The manufacturing and placing on the market of new mercury-added products and the use of new manufacturing processes involving the use of mercury or mercury compounds 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 the new mercury-added product or new manufacturing process would provide significant environmental or health benefits and pose no significant risks either to the environment or to human health, and that no technically practicable mercury-free alternatives providing such benefits are available.

(20) The use of mercury and mercury compounds in artisanal and small-scale gold mining and processing accounts for a significant share of mercury use and emissions worldwide with negative effects both for local communities and at a global level. Such use of mercury and mercury compounds should therefore be prohibited under this Regulation and regulated at international level. Without prejudice to the prohibition of such use and in addition to the implementation of effective, proportionate and dissuasive penalties by Member States in respect of infringements of this Regulation, it is also appropriate to provide for a national plan in the event of there being more than isolated cases of non-compliance with that prohibition, in order to tackle the problem of artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore.

(21) The use of mercury in dental amalgam is the largest use of mercury in the Union and a significant source of pollution. The use of dental amalgam should therefore be phased down in accordance with the Convention and with national plans based, in particular, upon the measures listed in Part II of Annex A to the Convention. The Commission

Changes to legislation: *There are outstanding changes not yet made to Regulation (EU) 2017/852 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

should assess and report on the feasibility of a phase out of the use of dental amalgam in the long term, and preferably by 2030, taking into account the national plans required by this Regulation and whilst fully respecting Member States' competence for the organisation and delivery of health services and medical care. Furthermore, particular preventive health protection measures should be taken for vulnerable members of the population, such as children and pregnant or breastfeeding women.

(22) Only pre-dosed encapsulated dental amalgam should be allowed for use, and the use of amalgam separators in dental facilities in which dental amalgam is used or dental amalgam fillings or teeth containing such fillings are removed should be made mandatory, in order to protect dental practitioners and patients from mercury exposure and to ensure that the resulting waste is collected and disposed of in accordance with sound waste management and under no circumstances released into the environment. In this respect, the use of mercury in bulk form by dental practitioners should be prohibited. Amalgam capsules such as those described in European standards EN ISO 13897:2004 and EN ISO 24234:2015 are considered to be suitable for use by dental practitioners. Furthermore, a minimum level of retention efficiency for amalgam separators should be set. Compliance of amalgam separators should be based on relevant standards, such as European standard EN ISO 11143:2008. Given the size of economic operators in the dentistry sector affected by the introduction of those requirements, it is appropriate to provide sufficient time to adapt to the new requirements.

(23) The training of dentistry students and dental practitioners on the use of mercury-free alternatives, in particular for vulnerable members of the population such as children and pregnant or breastfeeding women, as well as the carrying out of oral health research and innovation in order to improve knowledge of existing materials and restoration techniques, and to develop new materials, can help in reducing the use of mercury.

(24) Over 6 000 metric tonnes of liquid mercury waste will have been generated in the Union by the end of 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[(7)]. Given the limited available capacity for undertaking the conversion of liquid mercury waste, the temporary storage of liquid mercury waste should still be allowed under this Regulation for a period of time sufficient for ensuring the conversion and, if applicable, solidification of all such waste produced. Such storage should be carried out in accordance with the requirements set out in Council Directive 1999/31/EC[(8)].

(25) Given that mercury is an extremely hazardous substance in its liquid form, the permanent storage without pre-treatment of mercury waste should be prohibited owing to the risks that such disposal poses. Therefore, mercury waste should undergo appropriate conversion, and if applicable, solidification operations prior to permanent storage. For that purpose and in order to reduce the associated risks, Member States should take into account the technical guidelines on mercury of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.

(26) In order to ensure that the provisions on waste of this Regulation are properly implemented, measures should be taken to ensure an effective traceability system

***Changes to legislation:** There are outstanding changes not yet made to Regulation (EU) 2017/852 of the European Parliament and of the Council. Any changes that have already been made to the legislation appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*

throughout the whole mercury waste management chain whereby the producers of mercury waste and the operators of waste management facilities that store and treat such waste are required to establish an information register, as part of the record-keeping required under Directive 2008/98/EC of the European Parliament and of the Council[(9)].

(27) The Convention requires Parties to endeavour to develop appropriate strategies for identifying and assessing sites contaminated by mercury or mercury compounds. Directive 2010/75/EU of the European Parliament and of the Council[(10)] requires operators of industrial installations to address soil contamination. Furthermore, Directive 2000/60/EC of the European Parliament and of the Council[(11)] requires Member States to address soil contamination where it adversely affects the status of a water body. Therefore, an exchange of information between the Commission and the Member States should take place to share experiences on the initiatives and measures taken at national level.

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

(29) In order to align Union legislation with decisions of the Conference of the Parties to the Convention supported by the Union by means of a Council decision adopted in accordance with Article 218(9) TFEU, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending the annexes to this Regulation and in respect of an extension of the period allowed for the temporary storage of mercury waste. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[(12)]. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(30) In order to ensure uniform conditions for the implementation of this Regulation with regard to specifying forms for import and export, setting out technical requirements for environmentally sound interim storage of mercury, mercury compounds and mixtures of mercury, prohibiting or authorising new mercury-added products and new manufacturing processes involving the use of mercury or mercury compounds and specifying reporting obligations, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[(13)].

(31) Member States should lay down rules on penalties applicable to infringements of this Regulation and should ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.