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PROPOSAL

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Delegations will find attached document SWD(2016) 18 final.

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COMMISSION STAFF WORKING DOCUMENT

Implementation Plan

Accompanying the document

**Proposal for a
REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

on mercury, and repealing Regulation (EC) No 1102/2008

{COM(2016) 39 final}
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Implementation Plan¹

1. Title of the document for the proposed act

Proposal for a Regulation of the European Parliament and of the Council on mercury, and repealing Regulation (EC) No 1102/2008.

2. Contact point

David Grimeaud (DG ENV.C4)

Telephone: +32 229-64044

Email: david.grimeaud@ec.europa.eu

3. Deliverables and implementation challenges

The Proposal seeks to complement the EU *acquis* on mercury with a view to ensuring full compliance of EU law with the Minamata Convention on Mercury (hereinafter, "Minamata Convention" or "Convention") and consequently to allowing the EU and its Member States to ratify it.

As this Convention reflects to a large extent the content of the EU *acquis*, including Mercury Export Ban Regulation (EC) No 1102/2008² this Proposal needs therefore only to address a few issues not yet tackled at EU level, including the establishment of restrictions on the import of mercury and on the import, export and manufacturing of certain mercury-added products, the control of the use of mercury in specific existing manufacturing processes, in new products and processes and for artisanal and small-scale gold mining (ASGM), the use of dental amalgam and the implementation of best environmental practices in dental facilities. From this list, it is considered that the potential implementation challenges would only be related to the international trade in mercury and mercury-added products, as well as to the use of mercury in new manufacturing processes and mercury-added products and in dental facilities.

Accordingly, the potential implementation challenges that may be raised by this Proposal are limited to those listed below.

3.1. To control international trade in mercury and mercury-added products

3.1.1 To restrict the import of mercury

In line with the Minamata Convention, the Proposal establishes a restriction regime on the import of mercury into the EU, which draws a twofold distinction, i.e. between imports from Parties and from non-Parties to the Convention and based on the source of the imported

¹ This Implementation Plan is provided for information purposes only. It does not legally bind the Commission on whether the identified actions will be pursued or on the form in which they will be pursued.

² 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.

mercury. In particular, while imports into the EU of mercury from other Parties are allowed unless the mercury originates from prohibited primary mining, imports from non-Parties must be based upon a certification from the exporting country that imported mercury is neither from primary mining nor from mercury used in the chlor-alkali industry.³ Additionally, mercury imports from Parties and non-Parties require a written consent for the importing Member State.

The Proposal foresees also a prohibition on mercury import when intended to be used for ASGM, irrespectively on whether mercury is imported from a Party or a non-Party to the Minamata Convention.

The potential implementation challenge for Member States will concern the traceability of the imported mercury, i.e. to ensure that it does not come from an unlawful source in breach of the requirements set out in the Convention and this Proposal. For doing so, Member States will have to ensure that the national authorities (e.g. customs authorities) designated under Regulation (EU) N° 649/2012 concerning the export and import of hazardous chemicals⁴ to carry out the administrative functions required by its implementation are also given the responsibility and the means to control imports of mercury. In particular, those authorities will have to check if the information provided by the exporting country, contains precise data regarding the origin of the exported mercury. Moreover, the authorities will need to ensure that the imported mercury does not end up in ASGM. In doing so, the designated national competent authorities may undertake to identify current mercury importers and liaise with them so as to ensure that they are informed of the new import restrictions.

3.1.2 To restrict the import, export and manufacturing of a set of mercury-added products

In accordance with the Minamata Convention, the Proposal provides for a prohibition as from 1st January 2021 to manufacture, import into the EU and export from the EU a range of products when they contain mercury, including batteries, switches and relays, high pressure mercury vapour lamps (HPMVs), pesticides, biocides and topical antiseptics and a set of non-electronic measuring devices (e.g. thermometers) or when their mercury content exceeds a given threshold, including button zinc silver or zinc air batteries, compact fluorescent lamps (CFLs), linear fluorescent lamps (LFLs), cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFLs and EEFLs) and cosmetics.

The EU *acquis* addresses already the placing on the (EU) market of all the mercury-added products covered by the Minamata Convention and, in some cases, the import of such products into the EU. EU law sets also mercury-content requirements that are in some cases different (tighter) from those established in the Convention.

Hence, as a potential implementation challenge, Member States will have the obligation to prevent the manufacture (for export) in their territory of mercury-added products not complying with the requirements of the Minamata Convention and of this Proposal. To do so, depending on each national administrative system, Member States will have to ensure that the national competent authorities in charge, for instance, of the registration and authorisation of

³ Regarding mercury from chlor-alkali facilities located in the territory of Parties to the Convention, these Parties have the obligation to dispose of excess mercury generated from the decommissioning of those facilities as mercury waste.

⁴ OJ L 201, 27.07.2012, p. 60.

industrial and artisanal activities, including those manufacturing relevant products containing mercury, are provided with the responsibility and the means to undertake controls on an *ad hoc* basis or as part of a routine inspection, programme and to review and revise permits if necessary. Another implementation challenge will be the implementation of adequate means to control imports and exports of the relevant mercury-added products to guarantee that only products complying with the Convention and EU law are imported and exported. To do so, Member States will have to make sure that the national competent authorities (e.g. market surveillance, customs authorities) designated to control the implementation of the requirements set out in several EU instruments regulating the relevant mercury-added products, including e.g. Regulation (EU) N° 649/2012 concerning the export and import of hazardous chemicals, the Batteries Directive (2006/66/EC),⁵ the RHoS Directive (2011/65/EU)⁶ and the Cosmetic Products Regulation (1223/2009)⁷ or any other competent authorities Member States may designate for that purpose, are also in charge of controlling the implementation of the import and export restrictions and are provided with adequate control and enforcement means.

3.2. To control mercury use

3.2.1 To control the use of mercury in new manufacturing processes and in new mercury-added products

The Minamata Convention provides that Parties shall discourage the manufacture and marketing of mercury-added products not covered by any known use of mercury-added products, unless an assessment of the risks and benefits of the product shows environmental or human health benefits. The Convention contains a similar provision regarding manufacturing processes, i.e. Parties shall discourage the development of any facility using a manufacturing process in which mercury or mercury compounds are intentionally used that did not exist prior to the entry into force of the Convention, unless the Party concerned can demonstrate that it provides significant environmental and health benefits and that there are no technically and economically mercury-free alternatives available providing such benefits.

Against this background, the Proposal foresees, on the one hand, an a-priori prohibition according to which the manufacture and/or placing on the market of a new mercury-added product or the development of a new manufacturing process using mercury is prohibited. On the other hand, the Proposal provides that a new mercury-added product or manufacturing process using mercury might still be authorised at EU level, provided that it is demonstrated that the product or process would result in significant environmental and health benefits and that there would be no mercury-free alternatives available.

Hence, the potential implementation challenge is the implementation of the conditions under which a new mercury-added product or the development of a new manufacturing process using mercury might be allowed. Regarding economic operators, they will have to provide *ex ante* relevant information to the competent authorities of the Member State concerned (where the manufacture and/or placing on the market of the new mercury-added product is expected to take place or where the new manufacturing process is foreseen to develop) to allow them to assess whether the conditions laid down in the Minamata Convention, as transposed in the

⁵ OJ L 266, 26.09.2006, p. 1.

⁶ OJ L 174, 01.07.2011, p. 88.

⁷ OJ L 342, 22.12.2009, p. 59.

Proposal, could be met. The Member State should share with the Commission this information and its opinion on whether those conditions are fulfilled. The Commission will then have to verify whether compliance with the requirements of the Proposal are met and, if so, adopt an Implementing Act authorising the new product or process. The Commission will also keep the Secretariat of the Minamata Convention informed of the assessment and its outcome. Thus, in sum, whereas operators will have to provide all information necessary to justify the manufacture and/or placing on the market of a new mercury-added product or the development of a new manufacturing process using mercury, the Member State concerned will need to assess the sufficiency and content of the information so provided and decide whether a notification to the Commission is necessary (i.e. whether the new product or process could be considered as meeting the applicable conditions). The Commission will assess and decide whether the concerned product or process could *in fine* be authorised on the EU market and territory.

3.2.2 To control the use of dental amalgam

In accordance with the Minamata Convention, the Proposal foresees that dental amalgam be used only in an encapsulated form and that dental facilities be equipped with amalgam separators aimed at collecting and retaining amalgam particles with a view to preventing discharge of mercury residues into sewage systems and, *in fine*, into the environment.

As potential implementation challenges, Member States will have to ensure that dentists that use dental amalgam be no longer supplied by mercury suppliers with mercury in bulk, but only dental amalgam in an encapsulated form. To do so, Member States may identify mercury suppliers that provide mercury to dentists located in their national territory and inform them of the new obligation on dental amalgam. As to dental facilities, they will have to ensure that their dental equipment be equipped with an amalgam separator, that this separator be regularly maintained to ensure a high level of mercury particle retention in accordance with applicable ISO and CEN standards or equivalent national standards and that the collected mercury particles be collected by an authorised hazardous waste collector.

4.1. Possible Commission actions to promote complete, correct and timely implementation of the proposed Regulation

- Creating a framework to enable an exchange of information on implementation. This framework may be integrated in existing or foreseen platforms and/or expert groups.
- Requesting Member States to nominate contact points and inform the ENV contact point.
- Pursuing continuous informal dialogue with Member States' contact points.
- Updating the Europa website to include the Mercury Regulation, a section dedicated to implementation duties, deliverables and timetables, links to relevant implementation guidance and/or information, to FAQs and to good practice examples.
- Facilitating bilateral and/or multilateral meetings with Member States, where there appear specific implementation challenges requiring further attention.
- Should implementation problems be identified and should informal bilateral dialogue fail to lead to a complete and correct implementation, the Commission may launch infringement procedures.

4.2. Possible Member State actions:

- Identify and nominate the appropriate liaison officers to take part in further technical discussions (mandatory).
- Inform the Commission about any potential problems related to implementation as soon as they are identified, and to share information related to implementation (recommended).
- Set up dedicated national web-pages (recommended) in order to, *inter alia*:
 - raise awareness and early adaptation to the new legal requirements;
 - disseminate general information on the Regulation to the operators;
 - offer a platform for FAQs and exchange of best practices.
- Develop e-services to support operators for, *inter alia*:
 - notification of their intent to manufacture and/or place on the market a new mercury-added product or to develop a new manufacturing process using mercury;
 - reporting (e.g. on non-compliance);
 - storing reported information in accordance with Article 12(2).