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,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

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 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.

(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, 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 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.

(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 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 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. 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.

(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 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.

(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 requires operators of industrial installations to address soil contamination. Furthermore, Directive 2000/60/EC of the European Parliament and of the Council 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. 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.

(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.

(32) Given the nature and extent of the modifications which need to be made to Regulation (EC) No 1102/2008, and to enhance legal certainty, clarity, transparency and legislative simplification, that Regulation should be repealed.

(33) In order to allow the competent authorities of the Member States and the economic operators affected by this Regulation sufficient time to adapt to the new regime laid down by this Regulation, it should apply from 1 January 2018.

(34) Since the objective of this Regulation, namely to ensure a high level of protection of human health and the environment from anthropogenic emissions and releases of mercury and mercury compounds, by means, inter alia, of a mercury and mercury-added product export and import prohibition, of restrictions on mercury use in manufacturing processes, products, artisanal and small-scale gold mining and processing and in dental amalgam, and of obligations applicable to mercury waste, cannot be sufficiently achieved by Member States, but can rather, by reason of the transboundary nature of mercury pollution and the nature of the measures to be taken, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

CHAPTER I

GENERAL PROVISIONS

Article 1

Subject matter and objective

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

Article 2

Definitions

1. For the purposes of this Regulation, the following definitions apply:

(1) ‘mercury’ means metallic mercury (Hg, CAS RN 7439-97-6);

(2) ‘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;

(3) ‘mixture’ means a mixture or solution composed of two or more substances;

(4) ‘mercury-added product’ means a product or product component that contains mercury or a mercury compound that was intentionally added;

(5) ‘mercury waste’ means metallic mercury that qualifies as waste as defined in point (1) of Article 3 of Directive 2008/98/EC;

(6) ‘export’ (except in the expressions “exporting country” and “exported mercury”) means any of the following:

(a) the permanent or temporary export from Gibraltar to a country other than-

(i) one which is a member state on IP completion day, or

(ii) the United Kingdom,

of mercury, mercury compounds, mixtures of mercury and mercury-added products;

(b) the re-export of mercury, mercury compounds, mixtures of mercury and mercury-added products not meeting the conditions of Article 28(2) TFEU which are placed under a customs procedure other than the external Union transit procedure for movement of goods through the customs territory of the Union;

(7) ‘import’ means the physical introduction into Gibraltar from a country other than-

(i) one which is a member state on IP completion day, or

(ii) the United Kingdom,

of mercury, mercury compounds, mixtures of mercury and mercury-added products;

(8) ‘disposal’ means disposal as defined in point (19) of Article 3 of Directive 2008/98/EC;

(9) ‘primary mercury mining’ means mining in which the principal material sought is mercury;

(10) ‘conversion’ means the chemical transformation of the physical state of mercury from a liquid state to mercury sulfide or a comparable chemical compound that is equally or more stable and equally or less soluble in water and that presents no greater environmental or health hazard than mercury sulfide;

(11) ‘placing on the market’ means supplying or making available in Gibraltar, whether in return for payment or free of charge, to a third party. Import shall be deemed to be placing on the market.

(12) “competent authority” means the person designated as the competent authority under regulation 5 of the Environment Control of Mercury (Enforcement) Regulations 2017;

(13) “Minister means the Minister with responsibility for the Environment

2. For the purposes of this Regulation, “Directive 2008/98/EC” means Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives as last amended by Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste and read in accordance with paragraphs 3 and 4.

3. Article 5 of Directive 2008/98/EC is to be read as if-

(a) in paragraph 1, "Member States shall take appropriate measures to ensure that" were omitted;

(b) after paragraph 1 there were inserted-

"1A. Any decision as to whether a substance or object is a by-product must be made-

(a) in accordance with any regulations setting out detailed criteria on the application of the conditions in paragraph 1 to specific substances or objects; and

(b) having regard to any guidance published by the Minister or the competent authority for the purposes of this Article.";

(c) paragraphs 2 and 3 were omitted.

4. Article 6 of Directive 2008/98/EC is to be read as if-

(a) in paragraph 1, "Member States shall take appropriate measures to ensure that" were omitted;

(b) after paragraph 1 there were inserted-

"1A. Any decision as to whether a substance or object has ceased to be waste must be made-

(a) in accordance with any regulations or retained direct EU legislation setting out detailed criteria on the application of the conditions in paragraph 1 to specific types of waste; and

(b) having regard to any guidance published by the Minister or the competent authority for the purposes of this Article.";

(c) in paragraph 2-

(i) the first subparagraph were omitted;

(ii) in the second subparagraph, for "Those detailed criteria" there were substituted "Any detailed criteria set out in guidance as referred to in paragraph 1A";

(iii) the third and fourth subparagraphs were omitted;

(d) paragraph 3 were omitted;

(e) in paragraph 4-

(i)

in the first subparagraph-

(aa) in the first sentence, for the words from the beginning to "Member State" there were substituted "Where criteria have not been set as referred to in paragraph 1A(a), the competent authority";

(bb) the second sentence were omitted;

(ii)

in the second subparagraph-

(aa) for "Member States" there were substituted "The Minister";

(bb) "by competent authorities" were omitted.".

CHAPTER II

TRADE AND MANUFACTURING RESTRICTIONS CONCERNING MERCURY, MERCURY COMPOUNDS, MIXTURES OF MERCURY AND MERCURY-ADDED PRODUCTS

Article 3

Export from Gibraltar **restrictions**

1.The export from Gibraltar of mercury shall be prohibited.

2.The export from Gibraltar of the mercury compounds and of the mixtures of mercury listed in Annex I shall be prohibited as from the dates set out therein.

3.By way of derogation from paragraph 2, the export of the mercury compounds listed in Annex I for the purposes of laboratory-scale research or laboratory analysis shall be allowed.

4.The export from Gibraltar , for the purpose of reclaiming mercury, of mercury compounds and of mixtures of mercury that are not subject to the prohibition laid down in paragraph 2 shall be prohibited.

Article 4

Import restrictions

1.The import into Gibraltar of mercury and mixtures of mercury listed in Annex I, including mercury waste from any of the large sources referred to in points (a) to (d) of Article 11, for purposes other than disposal as waste shall be prohibited. Such import for disposal as waste shall only be allowed where the exporting country has no access to available conversion capacity within its own territory.

Without prejudice to Article 11 and by way of derogation from the first subparagraph of this paragraph, the import into Gibraltar of mercury and mixtures of mercury listed in Annex I for a use allowed in Gibraltar shall be allowed where the competent authority has granted written consent to such import in either of the following circumstances:

(a) the exporting country is a Party to the Convention and the exported mercury is not from primary mercury mining that is prohibited under Article 3(3) and (4) of the Convention; or

(b) the exporting country not being a Party to the Convention has provided certification that the mercury is not from primary mercury mining.

2.The import into Gibraltar of mixtures of mercury that do not fall under paragraph 1 and of mercury compounds, for the purpose of reclaiming mercury, shall be prohibited.

3.The import into Gibraltar of mercury for use in artisanal and small-scale gold mining and processing shall be prohibited.

4.Where the import into Gibraltar of mercury waste is allowed in accordance with this Article, Regulation (EC) No 1013/2006 shall continue to apply in addition to the requirements of this Regulation.

Article 5

Export, import and manufacturing of mercury-added products

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

2.The prohibition laid down in paragraph 1 shall not apply to any of the following mercury-added products:

(a) products that are essential for civil protection and military uses;

(b) products for research, for calibration of instrumentation, or for use as a reference standard.

Article 6

Forms for import and export

The Minister may, by regulations, specify forms to be used for the purpose of implementing Articles 3 and 4.

CHAPTER III

RESTRICTIONS ON USE AND STORAGE OF MERCURY, MERCURY COMPOUNDS AND MIXTURES OF MERCURY

Article 7

Industrial activities

1.The use of mercury and mercury compounds in the manufacturing processes listed in Part I of Annex III shall be prohibited as from the dates set out therein.

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

3.Interim storage of mercury and of the mercury compounds and mixtures of mercury listed in Annex I to this Regulation shall be carried out in an environmentally sound manner, in accordance with the thresholds and requirements set out in Part IIA of the Public Health Act.

The Minister may, by regulations, prescribe technical requirements for environmentally sound interim storage of mercury, mercury compounds and mixtures of mercury in line with decisions adopted by the Conference of the Parties to the Convention in accordance with Article 10(3) and Article 27 of the Convention.

Article 8

New mercury-added products and new manufacturing processes

1.Economic operators shall not manufacture or place on the market mercury-added products that were not being manufactured prior to 1 January 2018 (‘new mercury-added products’) unless authorised to do so in accordance with paragraph 6 of this Article or allowed to do so under Directive 2011/65/EU of the European Parliament and of the Council.

The first subparagraph shall not apply to any of the following:

(a) equipment which is necessary for the protection of the essential interests of the security of Gibraltar, including arms, munitions and war material intended for specifically military purposes;

(b) equipment designed to be sent into space;

(c) technical improvements made to or the redesign of mercury-added products that were being manufactured prior to 1 January 2018 provided that such improvements or redesign lead to less mercury being used in those products.

2.Economic operators shall not use manufacturing processes involving the use of mercury or mercury compounds that were not processes used prior to 1 January 2018 (‘new manufacturing processes’) unless authorised to do so in accordance with paragraph 6.

The first subparagraph of this paragraph shall not apply to processes manufacturing or using mercury-added products other than those subject to the prohibition laid down in paragraph 1.

3.Where an economic operator intends to apply for authorisation in accordance with paragraph 6 in order to manufacture or place on the market a new mercury-added product, or to use a new manufacturing process, that would provide significant environmental or health benefits and pose no significant risks either to the environment or to human health, and where no technically practicable mercury-free alternatives providing such benefits are available, that economic operator shall notify the competent authority. That notification shall include the following information:

(a) a technical description of the product or process concerned;

(b) an assessment of its environmental and health benefits and risks;

(c) evidence demonstrating the absence of technically practicable mercury-free alternatives providing significant environmental or health benefits;

(d) a detailed explanation of the manner in which the process is to be operated or the product is to be manufactured, used and disposed of as waste after use, in order to ensure a high level of protection of the environment and of human health.

4.The competent authority must forward to the Minister the notification received from the economic operator if the competent authority considers on the basis of its own assessment of the information provided that the condition in the second subparagraph of paragraph 6 is fulfilled.

The competent authority Minister of cases in which it considers that the condition in the second subparagraph of paragraph 6 is not fulfilled.

5.*Omitted*

6.The Minister shall examine the notification received and assess whether it has been demonstrated that the condition in the second subparagraph is met.

The condition is 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

The Minister must inform the competent authority of the result of the assessment under the first subparagraph.

Where the Minister assesses that the condition in the second subparagraph is met, the Minister must, by regulations, specify that the relevant new mercury- added product or new manufacturing process is authorised.

Article 9

Artisanal and small-scale gold mining and processing

1.Artisanal and small-scale gold mining and processing in which mercury amalgamation is used to extract gold from ore shall be prohibited.

2.Without prejudice to paragraph 1 of this Article, where there is evidence of there being more than isolated cases of non-compliance with the prohibition laid down in paragraph 1 of this Article, the competent authority shall develop and implement a national plan in accordance with Annex IV.

Article 10

Dental amalgam

1.From 1 January 2019, dental amalgam shall only be used in pre-dosed encapsulated form. The use of mercury in bulk form by dental practitioners shall be prohibited.

2.From 1 July 2018, dental amalgam shall not be used for dental treatment of deciduous teeth, of children under 15 years and of pregnant or breastfeeding women, except when deemed strictly necessary by the dental practitioner based on the specific medical needs of the patient.

3.*Omitted*

4.From 1 January 2019, operators of dental facilities in which dental amalgam is used or dental amalgam fillings or teeth containing such fillings are removed, shall ensure that their facilities are equipped with amalgam separators for the retention and collection of amalgam particles, including those contained in used water.

Such operators shall ensure that:

(a) amalgam separators put into service from 1 January 2018 provide a retention level of at least 95 % of amalgam particles;

(b) from 1 January 2021, all amalgam separators in use provide the retention level specified in point (a).

Amalgam separators shall be maintained in accordance with the manufacturer's instructions to ensure the highest practicable level of retention.

5.Capsules and amalgam separators complying with United Kingdom standards, European standards, or with other national or international standards that provide an equivalent level of quality and retention, shall be presumed to satisfy the requirements set out in paragraphs 1 and 4.

6.Dental practitioners shall ensure that their amalgam waste, including amalgam residues, particles and fillings, and teeth, or parts thereof, contaminated by dental amalgam, is handled and collected by an authorised waste management establishment or undertaking.

Dental practitioners shall not release directly or indirectly such amalgam waste into the environment under any circumstances.

CHAPTER IV

DISPOSAL OF WASTE AND MERCURY WASTE

Article 11

Waste

Without prejudice to point (5) of Article 2 of this Regulation, mercury and mercury compounds, whether in pure form or in mixtures, from any of the following large sources shall be considered to be waste within the meaning of Directive 2008/98/EC and be disposed of without endangering human health or harming the environment, in accordance with legislation which, immediately before IP completion day, implemented that

Directive:

(a) the chlor-alkali industry;
(b) the cleaning of natural gas;
(c) non-ferrous mining and smelting operations;
(d) extraction from cinnabar ore.

Such disposal shall not lead to any form of reclamation of mercury.

Article 12

Reporting on large sources

1.Economic operators within the industry sectors referred to in points (a), (b) and (c) of Article 11 shall send, each year by 31 May, the following to the competent authority:

(a) data on the total amount of mercury waste stored in each of their installations;
(b) data on the total amount of mercury waste sent to individual facilities undertaking the temporary storage, the conversion and, if applicable, solidification of mercury waste, or the permanent storage of mercury waste that underwent conversion and, if applicable, solidification;
(c) the location and contact details of each facility referred to in point (b);
(d) a copy of the certificate provided by the operator of the facility undertaking the temporary storage of mercury waste, in accordance with Article 14(1);
(e) a copy of the certificate provided by the operator of the facility undertaking the conversion and, if applicable, the solidification of mercury waste, in accordance with Article 14(2);
(f) a copy of the certificate provided by the operator of the facility undertaking the permanent storage of mercury waste that underwent conversion and, if applicable, solidification, in accordance with Article 14(3).

2.The data referred to in points (a) and (b) of paragraph 1 shall be expressed using the codes laid down in Commission Decision 2000/532/EC.

3.The obligations laid down in paragraphs 1 and 2 shall cease to apply to an economic operator of chlor-alkali installations from one year after the date that all mercury cells operated by the economic operator have been decommissioned in accordance with Implementing Decision 2013/732/EU and all mercury has been handed over to waste management facilities.

Article 13

Storage of mercury waste

1.Mercury waste may be temporarily stored in liquid form provided that the specific requirements for the temporary storage of mercury waste pursuant to the provisions the Landfill Act 2002 are complied with and that such storage occurs in above-ground facilities dedicated to and equipped for the temporary storage of mercury waste.

The first subparagraph shall cease to apply as from 1 January 2023.

2.The Minister may, by regulations, extend the period allowed for temporary storage of mercury waste referred to in paragraph 1 of this Article by up to three years.

3.Prior to being permanently disposed of, mercury waste shall undergo conversion and, where intended to be disposed of in above-ground facilities, conversion and solidification.

Mercury waste that underwent conversion and, if applicable, solidification shall only be permanently disposed of in the following permanent storage facilities licensed for disposal of hazardous waste:

(a) salt mines that are adapted for the permanent storage of mercury waste that underwent conversion, or deep underground hard rock formations providing a level of safety and confinement equivalent to or higher than that of such salt mines; or

(b) above-ground facilities dedicated to and equipped for the permanent storage of mercury waste that underwent conversion and solidification and that provide a level of safety and confinement equivalent to or higher than that of the facilities referred to in point (a).

Operators of permanent storage facilities shall ensure that mercury waste that underwent conversion and, if applicable, solidification is stored separately from other waste and in disposal batches in a storage chamber that is sealed.

Article 14

Traceability

1.Operators of facilities undertaking the temporary storage of mercury waste shall establish a register including the following:

(a) for each shipment of mercury waste received:
  (i) the origin and amount of that waste;
  (ii) the name and contact details of the supplier and the owner of that waste;

(b) for each shipment of mercury waste leaving the facility:
  (i) the amount of that waste and its mercury content;
  (ii) the destination and intended disposal operation of that waste;
  (iii) a copy of the certificate provided by the operator of the facility undertaking the conversion and, if applicable, the solidification of that waste, as referred to in paragraph 2;
  (iv) a copy of the certificate provided by the operator of the facility undertaking the permanent storage of the mercury waste that underwent conversion and, if applicable, solidification, as referred to in paragraph 3;

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

Operators of facilities undertaking the temporary storage of mercury waste shall, as soon as the mercury waste is taken out of temporary storage, issue a certificate confirming that the mercury waste was sent to a facility undertaking disposal operations covered by this Article.

Once a certificate as referred to in the second subparagraph of this paragraph is issued, a copy thereof shall be transmitted without delay to the economic operators concerned referred to in Article 12.

2.Operators of facilities undertaking the conversion and, if applicable, the solidification of mercury waste shall establish a register including the following:

(a) for each shipment of mercury waste received:

(i) the origin and amount of that waste;

(ii) the name and contact details of the supplier and the owner of that waste;

(b) for each shipment of mercury waste that underwent conversion and, if applicable, solidification leaving the facility:

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

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

(iii) a copy of the certificate provided by the operator of the facility undertaking the permanent storage of that waste, as referred to in paragraph 3;

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

Operators of facilities undertaking the conversion and, if applicable, the solidification of mercury waste shall, as soon as the conversion and, if applicable, the solidification operation of the entire shipment is completed, issue a certificate confirming that the entire shipment of mercury waste has been converted and, if applicable, solidified.

Once a certificate as referred to in the second subparagraph of this paragraph is issued, a copy thereof shall be transmitted without delay to the operators of the facilities referred to in paragraph 1 of this Article and to the economic operators concerned referred to in Article 12.

3.Operators of facilities undertaking the permanent storage of mercury waste that underwent conversion and, if applicable, solidification shall, as soon as the disposal operation of the entire shipment is completed, issue a certificate confirming that the entire shipment of mercury waste that underwent conversion and, if applicable, solidification has been placed into permanent storage in compliance with the Landfill Act 2002, including information on the storage location.

Once a certificate as referred to in the first subparagraph of this paragraph is issued, a copy thereof shall be transmitted without delay to the operators of the facilities referred to in paragraphs 1 and 2 of this Article as well as to the economic operators concerned referred to in Article 12.

4.Each year by 31 January, the operators of the facilities referred to in paragraphs 1 and 2 shall transmit the register for the previous calendar year to the competent authority. The competent authority shall annually communicate each transmitted register to the Minister.

Article 15

Contaminated sites

1.The competent authority must provide the Minister with information regarding the measures taken to identify and assess sites contaminated by mercury and mercury compounds and to address the significant risks such contamination may pose to human health and the environment

2.If any sites are identified by the competent authority pursuant to paragraph 1 the Minister must make that information publicly available on the internet.

CHAPTER V

PENALTIES, COMPETENT AUTHORITIES AND REPORTING

Articles 16 & 17

Omitted

Article 18

Report

1.By 1 January 2020 and at appropriate intervals thereafter, the Minister shall prepare and make publicly available on the internet a report with the following:

(a) information concerning the implementation of this Regulation;

(b) information needed for the fulfilment by Gibraltar of its reporting obligation under Article 21 of the Convention;

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

(d) information regarding mercury located in Gibraltar:

  (i) a list of sites where stocks of more than 50 metric tonnes of mercury other than mercury waste are located as well as the amount of mercury at each site;

  (ii) a list of sites where more than 50 metric tonnes of mercury waste is accumulated as well as the amount of mercury waste at each site; and

(e) a list of sources supplying more than 10 metric tonnes of mercury per year, where the Minister is made aware of such sources.

The Minis may decide not to make any of the information referred to in the first subparagraph publicly available to the extent that an exception to disclosure applies under the Freedom of Access to Information on the Environment Regulations 2005.

Article 19

Omitted

CHAPTER VI

DELEGATED AND IMPLEMENTING POWERS

Article 20

Amendment of Annexes

1.The Minister may, by regulations, amend Annex 1, 2, 3 or 4 to align it with a decision adopted by the Conference of the Parties to the Convention in accordance with Article 27 of the Convention.

2.Regulations made under this Regulation may-

(a) contain consequential, incidental, supplementary, transitional or saving provision (including provision amending, repealing or revoking enactments (which has the meaning given by section 3(1) of the European Union (Withdrawal) Act 2019));

(b) make different provision for different purposes.

Articles 21 to 24

Omitted

ANNEX I

Mercury compounds subject to Article 3(2) and (3) and Article 7(3) and mixtures of mercury subject to Article 3(2), Article 4(1) and Article 7(3)

Mercury compounds prohibited for export from 1 January 2018:

- Mercury (I) chloride (Hg_2Cl_2, 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 compounds prohibited for export from 1 January 2020:

- Mercury (II) sulphate ($HgSO_4$, CAS RN 7783-35-9)
- Mercury (II) nitrate ($Hg(NO_3)_2$, CAS RN 10045-94-0)

Mixtures of mercury prohibited for export and import from 1 January 2018:

- Mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95 % by weight.

ANNEX II

Mercury-added products referred to in Article 5

Part A — Mercury-added products

a 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).	
Mercury-added products	Date from which the export, import and manufacturing of the mercury-added products are prohibited
1.Batteries or accumulators that contain more than 0,0005 % of mercury by weight.	31.12.2020

2.Switches and relays, except very high accuracy capacitance and loss measurement bridges and high frequency radio frequency switches and relays in monitoring and control instruments with a maximum mercury content of 20 mg per bridge, switch or relay.	31.12.2020
3.Compact fluorescent lamps (CFLs) for general lighting purposes: (a) CFL.i ? 30 watts with a mercury content exceeding 2,5 mg per lamp burner; (b) CFL.ni ? 30 watts with a mercury content exceeding 3,5 mg per lamp burner.	31.12.2018
4.The following linear fluorescent lamps (LFLs) for general lighting purposes: (a) Triband phosphor < 60 watts with a mercury content exceeding 5 mg per lamp; (b) Halophosphate phosphor ? 40 watts with a mercury content exceeding 10 mg per lamp.	31.12.2018
5.High pressure mercury vapour lamps (HPMVs) for general lighting purposes.	31.12.2018
6.The following mercury-added cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFLs and EEFLs) for electronic displays: (a) short length (? 500 mm) with mercury content exceeding 3,5 mg per lamp; (b) medium length (> 500 mm and ? 1 500 mm) with mercury content exceeding 5 mg per lamp; (c) long length (> 1 500 mm) with mercury content exceeding 13 mg per lamp.	31.12.2018
7.Cosmetics with mercury and mercury compounds, except those special cases included in entries 16 and 17 of Annex V to Regulation (EC) No 1223/2009 of the European Parliament and of the Councila.	31.12.2020
8.Pesticides, biocides and topical antiseptics.	31.12.2020

9.The following non-electronic measuring devices: (a) barometers; (b) hygrometers; (c) manometers; (d) thermometers and other non-electrical thermometric applications; (e) sphygmomanometers; (f) strain gauges to be used with plethysmographs; (g) mercury pycnometers; (h) mercury metering devices for determination of the softening point. This entry does not cover the following measuring devices: • non-electronic measuring devices installed in large-scale equipment or those used for high precision measurement where no suitable mercury-free alternative is available; • measuring devices more than 50 years old on 3 October 2007; • measuring devices which are to be displayed in public exhibitions for cultural and historical purposes.	31.12.2020

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

Switches and relays, cold cathode fluorescent lamps and external electrode fluorescent lamps (CCFLs and EEFLs) for electronic displays and measuring devices, when they are used to replace a component of larger equipment and provided that no feasible mercury-free alternative for that component is available, in accordance with the End-of Life Vehicles Rules 2004.

ANNEX III

Mercury-related requirements applicable to manufacturing processes referred to in Article 7(1) and (2)

Part I:Prohibited use of mercury or mercury compounds, whether in pure form or in mixtures, in manufacturing processes

(a) from 1 January 2018: manufacturing processes in which mercury or mercury compounds are used as a catalyst;

(b) by way of derogation from point (a), the production of vinyl chloride monomer shall be prohibited from 1 January 2022;

(c) from 1 January 2022: manufacturing processes in which mercury is used as an electrode;

(d) by way of derogation from point (c), from 11 December 2017: chlor-alkali production in which mercury is used as an electrode;

(e) by way of derogation from point (c), the production of sodium or potassium methylate or ethylate shall be prohibited from 1 January 2028;

(f) from 1 January 2018: the production of polyurethane, to the extent not already restricted or prohibited in accordance with entry 62 of Annex XVII to Regulation (EC) No 1907/2006.

Part II:Manufacturing processes subject to restrictions on use and releases of mercury and mercury compounds

Production of sodium or potassium methylate or ethylate

The production of sodium or potassium methylate or ethylate shall be carried out in accordance with point (e) of Part I and subject to the following conditions:

(a) no use of mercury from primary mercury mining;

(b) reduction of direct and indirect release of mercury and of mercury compounds into air, water and land in terms of per unit production by 50 % by 2020 as compared to 2010;

(c) supporting research and development in respect of mercury-free manufacturing processes; and

(d) as from 13 June 2017, the capacity of installations using mercury and mercury compounds for the production of sodium or potassium methylate or ethylate that were in operation before that date shall not be increased and no new installations shall be allowed.

ANNEX IV

Content of the national plan on artisanal and small-scale gold mining and processing referred to in Article 9

The national plan shall include the following information:

(a) national objectives and reduction targets to eliminate the use of mercury and mercury compounds;

(b) actions to eliminate:

  (i) whole ore amalgamation;

  (ii) open burning of amalgam or processed amalgam;

  (iii) burning of amalgam in residential areas; and

  (iv) cyanide leaching in sediment, ore or tailings to which mercury has been added without first removing the mercury;

(c) steps to facilitate the formalization or regulation of the artisanal and small-scale gold mining and processing sector;

(d) baseline estimates of the quantities of mercury used and the practices employed in artisanal and small-scale gold mining and processing within its territory;

(e) strategies for promoting the reduction of emissions and releases of, and exposure to, mercury in artisanal and small-scale gold mining and processing, including mercury-free methods;

(f) strategies for managing trade and preventing the diversion of mercury and mercury compounds from both foreign and domestic sources to use in artisanal and small-scale gold mining and processing;

(g) strategies for involving stakeholders in the implementation and continuing development of the national plan;

(h) a public health strategy on the exposure of artisanal and small-scale gold miners and their communities to mercury which shall include, inter alia, the gathering of health data, training for health-care workers and awareness-raising through health facilities;

(i) strategies to prevent the exposure of vulnerable populations, particularly children and women of child-bearing age, especially pregnant women, to mercury used in artisanal and small-scale gold mining and processing;

(j) strategies for providing information to artisanal and small-scale gold miners and affected communities; and

(k) a schedule for the implementation of the national plan.

ANNEX V

Correlation table

Regulation (EC) No 1102/2008	This Regulation
Article 1(1)	Article 3(1) and (2)
Article 1(2)	Article 3(3)
Article 1(3)	Article 3(4)
Article 2	Article 11
Article 3(1)(a)	Article 13(3)(a)
Article 3(1)(b)	Article 13(1)
Article 3(1), second subparagraph	Article 13(1), first subparagraph and Article 13(3), third subparagraph
Article 3(2)	—
Article 4(1)	Article 13(1)
Article 4(2)	Article 13(1)
Article 4(3)	—
Article 5(1)	—
Article 5(2)	—
Article 5(3)	—
Article 6(1)(a)	—
Article 6(1)(b)	Article 12(1)(a)
Article 6(1)(c)	Article 12(1)(b) and (c)
Article 6(2)(a)	Article 12(1)(a)
Article 6(2)(b)	Article 12(1)(b) and (c)
Article 6(3)	Article 12(1)
Article 6(4)	—
Article 7	Article 16
Article 8(1)	—
Article 8(2)	—

Article 8(3)	—
Article 8(4)	—
Article 8(5)	—
Article 9	—