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Commission Implementing Decision (EU) 2017/2287

of 8 December 2017

specifying the forms to be used in relation to the import of mercury and of certain mixtures of mercury pursuant to Regulation (EU) 2017/852 of the European Parliament and of the Council on mercury

(notified under document C(2017) 8190)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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, and in particular Article 6 thereof,

Whereas:

- (1) In line with Article 3 of the Minamata Convention on Mercury ('the Minamata Convention'), Article 4(1) of Regulation (EU) 2017/852 provides that mercury and certain mixtures of mercury may be imported into the customs territory of the Union, for purposes other than disposal as waste, only if the importing Member State has granted written consent to the import. Where the exporting country is not a party to the Minamata Convention, consent may only be granted if the exporting country has also provided certification that the mercury is not from primary mercury mining.
- (2) The forms for granting or denying such consent and for certifying that the mercury is not from primary mercury mining should be consistent with the forms set out in Decision UNEP/MC/COP.1/5 adopted by the Conference of the Parties to the Minamata Convention at its first meeting and adjusted as necessary to take account of the requirements of Regulation (EU) 2017/852.
- (3) For consistency with the date of application of Regulation (EU) 2017/852, the application of this Decision should be deferred to 1 January 2018.
- (4) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 22 of Regulation (EU) 2017/852,

HAS ADOPTED THIS DECISION:

Article 1

1. The form to be used by the competent authority when granting or denying written consent pursuant to the second subparagraph of Article 4(1) of Regulation (EU) 2017/852 is set out in Annex I to this Decision. However, this Article does not apply in the case of mercury, or a mixture of mercury, that qualifies as or is considered to be waste within the meaning of Directive 2008/98/EC.

2. In this Article and in Article 2, "competent authority" and "appropriate authority" have the same meanings as in points (12) and (13) (respectively) of Article 2(1) of Regulation (EU) 2017/852 of the European

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

3. In this Article and in Article 2, “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.

4. 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.

5. 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 appropriate authority 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 appropriate authority”;

(bb) “by competent authorities” were omitted.

Article 2

The competent authority may grant written consent pursuant to the second subparagraph of Article 4(1) of Regulation (EU) 2017/852 in the circumstances set out in point (b) of that subparagraph only if the certification required by that point is in the form set out in Annex II to this Decision. However, this Article does not apply in the case of mercury, or a mixture of mercury, that qualifies as or is considered to be waste within the meaning of Directive 2008/98/EC.

Articles 3 & 4

Omitted

ANNEX I

FORM FOR GRANTING OR DENYING WRITTEN CONSENT, PURSUANT TO ARTICLE 4(1) OF REGULATION (EU) 2017/852, TO THE IMPORT ETC. OF MERCURY OR OF THE MIXTURES OF MERCURY LISTED IN ANNEX I TO THAT REGULATION

FORM FOR GRANTING OR DENYING WRITTEN CONSENT, PURSUANT TO ARTICLE 4(1) OF REGULATION (EU) 2017/852 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL ON MERCURY, TO THE IMPORT ETC. OF MERCURY OR OF THE MIXTURES OF MERCURY LISTED IN ANNEX I TO THAT REGULATION

Note: This form applies to the import into Gibraltar of mercury and of mixtures of mercury with other substances, including alloys of mercury, with a mercury concentration of at least 95% by weight, as listed in Annex I to Regulation (EU) 2017/852 on mercury (‘mixtures of mercury’). This form does not apply in the case of mercury, or a mixture of mercury, that qualifies as or is considered to be waste within the meaning of Directive 2008/98/EC on waste(1).

Section A:

Contact information to be provided by the exporting country

Name of designated national focal point or responsible government official:

Address:

Tel.:

Fax:

Email:

Section B:

Shipment information to be provided by the exporting country

(i) Please indicate the intended total quantity of mercury, whether in pure form or in mixtures, to be shipped (kg)

(ii) Please indicate the intended date(s) of shipment(s)

(iii) Please indicate if the mercury, whether in pure form or in mixture, is from primary mercury mining:

If YES:Exporting country Party to the Minamata Convention: Please indicate if the mercury is from new or from existing primary mining within the meaning of Article 3(3) and (4) of the Minamata Convention.

If the exporting country is a non-Party, it has provided certification that the mercury is not from primary mercury mining.

(iv) Please confirm that the mercury whether in pure form or in mixture is not from any of the three following sources:

- the chlor-alkali industry (e.g. decommissioning of chlor-alkali cells),
- the cleaning of natural gas,
- non-ferrous mining and smelting operations.

Section C:

Information to be provided by the competent authority

What is the purpose of the import of the mercury whether in pure form or in mixtures? Please circle:

(i) Environmentally sound interim storage in accordance with Article 7(3) of Regulation (EU) 2017/852

YES	NO
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If yes, please specify the intended use if known.

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...

...

(ii) Use allowed under Gibraltar law:

YES

NO

If yes, please specify additional details about the intended use of the mercury whether in pure form or in mixture.

...

...

...

Section D:

Shipping information

Importer

Name of business:

Address:

Tel.:

Fax:

Email:

Exporter

Name of business:

Address:

Tel.:

Fax:

Email:

Section E:

Indication of consent by the competent authority

Nature of consent, please circle:

GRANTED

DENIED

Please use the space below to indicate any conditions, additional details or relevant information.

...

ANNEX II

FORM TO BE USED BY COUNTRIES THAT ARE NOT PARTIES TO THE MINAMATA CONVENTION ON MERCURY INTENDING TO EXPORT MERCURY, WHETHER IN PURE FORM OR IN MIXTURES, TO A MEMBER STATE FOR THE PROVISION OF CERTIFICATION ON THE SOURCE OF MERCURY

FORM FOR CERTIFICATION OF THE SOURCE OF MERCURY, WHETHER IN PURE FORM OR IN
MIXTURES, TO BE EXPORTED

Section A:

Shipment information to be provided by the exporting country

- (i) Please indicate the intended total quantity of mercury whether in pure form or in mixtures to be shipped
- (ii) Please indicate the intended date(s) of shipment(s)

Section B:

Shipping information

Importer

Name of business:

Address:

Tel.:

Fax:

Email:

Exporter

Name of business:

Address:

Tel.:

Fax:

Email:

Section C:

Certification

In accordance with Article 3(8) of the Minamata Convention on Mercury, my Government certify that the mercury included in the shipment described in this form is not from primary mercury mining

Please, provide supporting information on the source of the mercury to be exported

Signature of responsible government official and date:

- Name
- Title:
- Signature
- Date: