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## **LEGISLATIVE ACTS AND OTHER INSTRUMENTS**

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Subject: COUNCIL DECISION on the position to be taken on behalf of the European Union at the first meeting of the Conference of the Parties of the Minamata Convention on Mercury as regards the adoption of the required content of the certification referred to in Article 3(12) of the Convention and of the guidance referred to in Article 8(8) and (9) of the Convention

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**COUNCIL DECISION (EU) 2017/...**

**of ...**

**on the position to be taken on behalf of the European Union  
at the first meeting of the Conference of the Parties of the Minamata Convention  
on Mercury as regards the adoption of the required content of the certification  
referred to in Article 3(12) of the Convention and of the guidance referred to  
in Article 8(8) and (9) of the Convention**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

Whereas:

- (1) On 11 May 2017, the Minamata Convention on Mercury<sup>1</sup> (the 'Convention') was approved, on behalf of the European Union, by way of Council Decision (EU) 2017/939<sup>2</sup>.
- (2) The Convention will enter into force on 16 August 2017. The first meeting of the Conference of the Parties to the Convention (the 'COP 1') will be held on 24-29 September 2017 in Geneva. In these circumstances, the Union should determine the position to be taken at the COP 1.
- (3) Article 3(8) of the Convention requires Parties that intend to import mercury from a non-Party to only allow such import on the condition that they are provided with certification from the exporting non-Party that the imported mercury is neither from primary mercury mining nor from excess mercury from the decommissioning of chlor-alkali facilities (the 'certification').
- (4) Article 3(12) of the Convention provides for the adoption of the required content of the certification by the COP 1. Such required content of the certification will therefore have legal effects.

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<sup>1</sup> OJ L 142, 2.6.2017, p. 6.

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

- (5) Regulation (EU) 2017/852 of the European Parliament and of the Council<sup>1</sup> complies with the provisions of Article 3(8) of the Convention, as complemented by the proposed required content of the certification.
- (6) Article 8(4) of the Convention requires Parties to ensure that new point sources falling within the source categories listed in Annex D make use of best available techniques and best environmental practices to control and, where feasible, to reduce emissions of mercury and mercury compounds into the atmosphere.
- (7) Article 8(5) of the Convention provides that Parties shall control and, where feasible, reduce emissions to air of mercury and mercury compounds from the existing point sources falling within the source categories listed in Annex D by implementing one or more of the following measures: using best available techniques and best environmental practices; establishing quantified goals or emission limit values; establishing a multi-pollutant control strategy; or alternative measures.
- (8) Article 8(7) of the Convention requires Parties to establish and maintain an inventory of emissions of mercury and mercury compound to the atmosphere.

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

- (9) Article 8(8) of the Convention stipulates that the COP 1 shall adopt guidance on best available techniques and best environmental practices, taking into account any differences between new and existing sources and taking into account the need to minimise cross-media effects, and shall also adopt guidance aimed at supporting Parties in the implementation of their obligations under Article 8(5), in particular in determining goals and setting emission limit values.
- (10) Article 8(9) of the Convention provides for the adoption by the Conference of the Parties to the Convention, as soon as practicable, of guidance on criteria that Parties may develop pursuant to Article 8(2)(b), when choosing to apply control measures on emissions of mercury and mercury compounds to air only to the point sources falling within a given source category listed in Annex D, provided that at least 75 per cent of the emissions of the concerned source category are covered, and of guidance on the methodology to be used for preparing inventory of emissions to air of mercury and mercury compounds.
- (11) The second sentence of Article 8(10) of the Convention specifies that Parties shall take the guidance into account in implementing the relevant provisions of that Article. Such guidance will therefore have legal effects.

- (12) The Intergovernmental Negotiating Committee of the Convention, at its seventh session held on 10-15 March 2016 in Jordan, adopted, on a provisional basis, pending formal adoption by the COP 1, the four guidance documents referred to in Article 8(8) and (9) of the Convention.
- (13) Union legislation, including Directive 2010/75/EU of the European Parliament and of the Council<sup>1</sup> and Regulation (EC) No 166/2006 of the European Parliament and of the Council<sup>2</sup> complies with the provisions of Article 8 of the Convention, as complemented by the proposed guidance.
- (14) The proposed required content of the certification and the proposed four guidance documents should therefore be supported,

HAS ADOPTED THIS DECISION:

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<sup>1</sup> Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (OJ L 334, 17.12.2010, p. 17).

<sup>2</sup> Regulation (EC) No 166/2006 of the European Parliament and of the Council of 18 January 2006 concerning the establishment of a European Pollutant Release and Transfer Register and amending Council Directives 91/689/EEC and 96/61/EC (OJ L 33, 4.2.2006, p. 1).

### *Article 1*

The position to be taken on behalf of the European Union at the first meeting of the Conference of the Parties to the Minamata Convention on Mercury (the 'Convention'), shall be to support the adoption of the required content of the certification referred to in Article 3(12) and of the guidance referred to in Article 8(8) and (9) of the Convention.

Minor changes to the documents referred to in the first paragraph may be agreed to by the representatives of the Union, in consultation with Member States during coordination meetings, without further decision of the Council.

### *Article 2*

The Decision(s) of the Conference of the Parties to the Convention adopting the documents referred to in Article 1 shall be published in the *Official Journal of the European Union*.

### *Article 3*

This Decision shall enter into force on the day of its adoption.

Done at ...,

*For the Council*

*The President*

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