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#### COVER NOTE

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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	7 August 2014
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) No .../.. of 7.8.2014 amending Annex I to Regulation (EU) No 649/2012 of the European Parliament and of the Council concerning the export and import of hazardous chemicals

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Delegations will find attached document C(2014) 5510 final.

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Encl.: C(2014) 5510 final



Brussels, 7.8.2014  
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**COMMISSION DELEGATED REGULATION (EU) No .../..**

**of 7.8.2014**

**amending Annex I to Regulation (EU) No 649/2012 of the European Parliament and of the Council concerning the export and import of hazardous chemicals**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Pursuant to Article 23(1) of Regulation (EU) No 649/2012 concerning the export and import of hazardous chemicals, at least once a year the Commission is required to review, on the basis of developments in Union law and under the Convention, the list of chemicals in Annex I to that Regulation. Since the last review of Annex I a number of regulatory actions in respect of certain chemicals have been taken under Regulation (EC) No 1107/2009 concerning the placing of plant protection products on the market and Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products. At the sixth Conference of the Parties to the Rotterdam Convention decisions were taken to include further chemicals in Annex III to the Convention. Those regulatory actions and decisions should be reflected in Annex I.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

On 11 October 2013 and 7 April 2014, the draft delegated Regulation was consulted with an expert group (the 'PIC DNA meeting'). The group is composed of all the relevant stakeholders - representatives of Member States, of the European Chemicals Agency, of the chemicals industry and of the civil society.

### **3. LEGAL ELEMENTS OF THE DELEGATED ACT**

The delegated act amends the list of chemicals in Annex I on the basis of developments in Union law and under the Convention, as requested by Article 23(1) of Regulation (EU) No 649/2012.

# COMMISSION DELEGATED REGULATION (EU) No .../..

of 7.8.2014

## amending Annex I to Regulation (EU) No 649/2012 of the European Parliament and of the Council concerning the export and import of hazardous chemicals

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 649/2012 of the European Parliament and of the Council of 4 July 2012 concerning the export and import of hazardous chemicals<sup>1</sup>, and in particular Article 23(4) thereof,

Whereas:

- (1) Regulation (EU) No 649/2012 implements the Rotterdam Convention on the Prior Informed Consent Procedure ("PIC procedure") for certain hazardous chemicals and pesticides in international trade, signed on 11 September 1998 and approved, on behalf of the Community, by Council Decision 2003/106/EC<sup>2</sup>.
- (2) It is appropriate that regulatory action in respect of certain chemicals taken pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council<sup>3</sup>, Regulation (EC) No 1107/2009 of the European Parliament and of the Council<sup>4</sup>, and Regulation (EU) No 528/2012 of the European Parliament and of the Council<sup>5</sup> be taken into account.
- (3) The approval of the substance bitertanol has been withdrawn in accordance with Regulation (EC) No 1107/2009, with the effect that bitertanol is banned for use as

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<sup>1</sup> OJ L 201, 27.7.2012, p. 60.

<sup>2</sup> Council Decision 2003/106/EC of 19 December 2002 concerning the approval, on behalf of the European Community, of the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade (OJ L 63, 6.3.2003, p. 27).

<sup>3</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (OJ L 396, 30.12.2006, p. 1).

<sup>4</sup> Regulation (EC) No 1107/2009 of the European Parliament and of the Council of 21 October 2009 concerning the placing of plant protection products on the market and repealing Council Directives 79/117/EEC and 91/414/EEC (OJ L 309, 24.11.2009, p. 1).

<sup>5</sup> Regulation (EU) No 528/2012 of the European Parliament and of the Council of 22 May 2012 concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1).

pesticide and thus should be added to the lists of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.

- (4) The substances cyhexatin and azocyclotin have not been approved as active substances in accordance with Regulation (EC) No 1107/2009, with the effect that those substances are banned for pesticide use and thus should be added to the lists of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.
- (5) The substances cinidon-ethyl, cyclanilide, ethoxysulfuron and oxadiargyl are no longer approved as active substances in accordance with Regulation (EC) No 1107/2009, with the effect that those substances are banned for pesticide use and thus should be added to the lists of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.
- (6) The substance rotenone has not been approved as an active substance in accordance with Regulation (EC) No 1107/2009, with the effect that rotenone is severely restricted for pesticide use because virtually all use is prohibited despite the fact that rotenone has been identified and notified for evaluation under Regulation (EU) No 528/2012 for product type 17 and may thus continue to be authorised by Member States until a decision under that Regulation is taken. Therefore, rotenone should be added to the lists of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.
- (7) The approval of the substance didecyldimethylammonium chloride has been withdrawn in accordance with Regulation (EC) No 1107/2009, with the effect that didecyldimethylammonium chloride is banned for use as pesticide in the group of plant protection products and thus should be added to the list of chemicals contained in Part 1 of Annex I to Regulation (EU) No 649/2012.
- (8) The substances warfarin and cyfluthrin are no longer approved as active substances in accordance with Regulation (EC) No 1107/2009, with the effect that those substances are banned for use as pesticide in the group of plant protection products and thus should be added to the list of chemicals contained in Part 1 of Annex I to Regulation (EU) No 649/2012.
- (9) At its sixth meeting held from 28 April to 10 May 2013, the Conference of the Parties to the Rotterdam Convention decided to include azinphos-methyl, perfluorooctane sulfonic acid, perfluorooctane sulfonates, perfluorooctane sulfonamides and perfluorooctane sulfonyls in Annex III to that Convention, with the effect that those chemicals became subject to the PIC procedure under that Convention. Those chemicals should thus be removed from the list of chemicals contained in Part 2 of Annex I to Regulation (EU) No 649/2012 and added to the list of chemicals contained in Part 3 of that Annex.
- (10) The Conference of the Parties to the Rotterdam Convention also decided to include commercial pentabromodiphenyl ether, including tetra- and pentabromodiphenyl ether, as well as commercial octabromodiphenyl ether, including hexa- and heptabromodiphenyl ether, in Annex III to that Convention, with the effect that those chemicals became subject to the PIC procedure under that Convention. Since tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether and heptabromodiphenyl ether are already listed in Annex V to Regulation (EU)

No 649/2012 and are therefore subject to an export ban, those chemicals are not added to the list of chemicals contained in Part 3 of Annex I to Regulation (EU) No 649/2012.

- (11) The entry for chlorate in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012 should be amended in order to provide more clarity as to the substances covered by that entry.
- (12) Regulation (EU) No 649/2012 should therefore be amended accordingly.
- (13) In order to allow enough time for all interested parties to take the measures necessary to comply with this Regulation and for Member States to take the measures necessary for its implementation, its application should be deferred,

HAS ADOPTED THIS REGULATION:

#### *Article 1*

Annex I to Regulation (EU) No 649/2012 is amended in accordance with the Annex to this Regulation.

#### *Article 2*

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from ... [*OJ: please insert the 40th day after publication, if that day falls on a 1st of a month. If that day falls on another date of a month, the 1st of the following month should be inserted*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 7.8.2014

*For the Commission*  
*The President*  
*José Manuel BARROSO*