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COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 28.11.2017 amending Annexes I and V to Regulation (EU) No 649/2012 of the European Parliament and of the Council concerning the export and import of hazardous chemicals

Delegations will find attached document C(2017) 7828 final.

Encl.: C(2017) 7828 final



EUROPEAN
COMMISSION

Brussels, 28.11.2017
C(2017) 7828 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 28.11.2017

**amending Annexes I and V 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, Regulation (EC) No 1907/2006 concerning the registration, evaluation, authorisation and restriction of chemicals (REACH) and Regulation (EU) No 528/2012 on the making available of biocidal products on the market. In addition, a recent amendment of Annex I to Regulation (EC) No 850/2004, which implements developments under the Stockholm Convention, needs to be addressed. At the seventh Conference of the Parties to the Rotterdam Convention decisions were taken to include a further chemical in Annex III to the Convention. Those regulatory actions and decisions should be reflected in Annexes I and V.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

On 26 April 2016, 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.

A public consultation was carried out for the draft act from 7 July to 7 August 2017 during which two comments were received. Both comments informed that a new application for approval of one chemical had been submitted, which may result in a change of the legal status of that chemical in future. Since the decision on the new application is still pending and the proposal is based on the current legal status of the chemical, no changes were made.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

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

COMMISSION DELEGATED REGULATION (EU) .../...

of 28.11.2017

amending Annexes I and V 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 chemicals¹, and in particular Article 23(4) thereof,

Whereas:

- (1) Regulation (EU) No 649/2012 implements the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade ("Rotterdam Convention"), signed on 11 September 1998 and approved, on behalf of the European Community, by Council Decision 2003/106/EC².
- (2) The substance 3-decen-2-one has not been approved in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council³, with the effect that that substance is banned for use as a 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.
- (3) No application for renewal of the approval of the active substance carbendazim was submitted in accordance with Regulation (EC) No 1107/2009, with the effect that carbendazim is banned for use as a 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.
- (4) No application for renewal of the approval of the active substance tepraloxydim was submitted in accordance with Regulation (EC) No 1107/2009, with the effect that tepraloxydim is banned for use as a 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.

¹ OJ L 201, 27.7.2012, p. 60.

² 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).

³ 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).

- (5) The substances cybutryne and triclosan have not been approved for use in biocidal products in accordance with Regulation (EU) No 528/2012 of the European Parliament and of the Council⁴, with the effect that those substances are banned for use as a 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.
- (6) The substance triflumuron has not been approved for use in biocidal products in accordance with Regulation (EU) No 528/2012, with the effect that that substance is banned for use in the sub-category "other pesticide including biocides" and thus should be added to the list of chemicals contained in Part 1 of Annex I to Regulation (EU) No 649/2012.
- (7) The substances 5-tert-butyl-2,4,6-trinitro-m-xylene, benzyl butyl phthalate, diisobutyl phthalate, diarsenic pentaoxide and tris (2-chloroethyl) phosphate are listed in Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council⁵ since they have been identified as substances of very high concern. Consequently, those substances are subject to authorisation. Since no authorisations were granted, those substances are severely restricted for industrial use. Therefore, those substances should be added to Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.
- (8) At its seventh meeting held from 4 to 15 May 2015, the Conference of the Parties to the Rotterdam Convention decided to include methamidophos in Annex III to that Convention, with the effect that that chemical became subject to the prior informed consent procedure under that Convention. The Conference of the Parties also decided to delete the existing entry in Annex III for "methamidophos (soluble liquid formulations of the substance that exceed 600 g active ingredient/l)". Those changes should thus be reflected in the lists of chemicals contained in Parts 1 and 3 of Annex I to Regulation (EU) No 649/2012.
- (9) At its seventh meeting held from 4 to 15 May 2015, the Conference of the Parties to the Stockholm Convention on Persistent Organic Pollutants ('Stockholm Convention'), which was approved by Council Decision 2006/507/EC⁶, decided to include the substances hexachlorobutadiene and polychlorinated naphthalenes in Annex A to that Convention. Those substances are listed in Part B of Annex I to Regulation (EC) No 850/2004 of the European Parliament and of the Council⁷ and thus should be added to Part 1 of Annex V to Regulation (EU) No 649/2012 in order to implement the Stockholm Convention.

⁴ 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).

⁵ 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).

⁶ Council Decision 2006/507/EC of 14 October 2004 concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants (OJ L 209, 31.7.2006, p. 1).

⁷ Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (OJ L 158, 30.4.2004, p. 7).

- (10) By Commission Regulation (EU) 2016/293⁸, the chemical hexabromocyclododecane (HBCDD) was added to Part A of Annex I to Regulation (EC) No 850/2004 following the decision taken at the sixth meeting of the Conference of the Parties to the Stockholm Convention, held from 28 April to 10 May 2013, to list that chemical in Part 1 of Annex A to that Convention. Consequently, that chemical should be added to Part 1 of Annex V to Regulation (EU) No 649/2012.
- (11) The Stockholm Convention allows recycling of articles that contain or may contain tetra- and pentabromodiphenyl ether or hexa- and heptabromodiphenyl ether, and the use and final disposal of articles manufactured from recycled materials that contain those substances provided that steps are taken to prevent exports of such articles that contain levels or concentrations of those substances exceeding those permitted for the sale, use, import or manufacture of those articles within the territory of the respective Party. In order to implement that obligation in the Union, articles containing concentrations of those substances at or above 0,1 % by weight when produced partially or fully from recycled materials or materials from waste prepared for re-use should be prohibited for export by adding them to Part 1 of Annex V to Regulation (EU) No 649/2012.
- (12) Regulation (EU) No 649/2012 should therefore be amended accordingly.
- (13) It is appropriate to provide for a reasonable period of 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,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) No 649/2012 is amended as follows:

- (1) Annex I is amended in accordance with Annex I to this Regulation.
- (2) Annex V is amended in accordance with Annex II 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 calendar 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.

⁸ Commission Regulation (EU) 2016/293 of 1 March 2016 amending Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants as regards Annex I (OJ L 55, 2.3.2016, p. 4).

Done at Brussels, 28.11.2017

For the Commission
The President
Jean-Claude JUNCKER