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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 23.7.2019 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(2019) 5370 final.

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Brussels, 23.7.2019
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COMMISSION DELEGATED REGULATION (EU) .../...

of 23.7.2019

**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

Regulation (EU) No 649/2012 concerning the export and import of hazardous chemicals entered into force on 16 August 2012, applies from 1 March 2014 and repealed Regulation (EC) No 689/2008 concerning the export and import of dangerous chemicals with effect from 1 March 2014.

Pursuant to Article 22(1) of Regulation (EC) No 689/2008 at least once a year the Commission was 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. Such amendment was done by adopting Commission Regulation (EU) No 73/2013 of 25 January 2013 amending Annexes I and V to Regulation (EC) No 689/2008 of the European Parliament and of the Council concerning the export and import of dangerous chemicals. However, those changes were not duly reflected in Regulation (EU) No 649/2012, which was already in force at that time but not yet in application, but have been implemented since 1 March 2014 by the relevant authorities and operators on the assumption that Regulation (EU) No 649/2012 was amended by Commission Regulation (EU) No 73/2013, which was not the case. In order to ensure legal clarity and consistency, it is necessary to amend Regulation (EU) No 649/2012 by reproducing Commission Regulation (EU) No 73/2013 and applying the amendment retroactively from 1 March 2014, as it was the initial intention of Commission Regulation (EU) No 73/2013.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The draft of Commission Regulation (EU) No 73/2013 was in accordance with the opinion of the Committee established by Article 133 of Regulation (EC) No 1907/2006, which assisted the Commission pursuant to Article 24 of Regulation (EC) No 689/2008. Since the content of this draft measure is identical with the content of Commission Regulation (EU) No 73/2013, which was supported by the Member States in that Committee, a written consultation of experts from the Member States on this draft measure was considered sufficient.

A public consultation was carried out for the draft act from 16 April to 14 May 2019 during which one comment was received. Since that comment was not relevant for the content of the draft act, 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. The legal basis for the proposed delegated act is Article 23(4) (a) and (b) of Regulation (EU) No 649/2012.

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

of 23.7.2019

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 points (a) and (b) of Article 23(4) thereof,

Whereas:

- (1) Regulation (EU) No 649/2012, which was adopted on 4 July 2012, implements the Rotterdam Convention on the Prior Informed Consent Procedure for certain hazardous chemicals and pesticides in international trade² ('the Rotterdam Convention'). It is a recast of Regulation (EC) No 689/2008 of the European Parliament and of the Council³ and replaced that Regulation with effect from 1 March 2014. Regulation (EC) No 689/2008 was amended by Commission Regulation (EU) No 73/2013⁴, which was adopted on 25 January 2013 but did not become applicable until 1 April 2013. The amendments set out in Regulation (EU) 73/2013 were not duly reflected in Regulation (EU) No 649/2012. Therefore, in order to ensure legal clarity and consistency, it is necessary to formally reflect in the Annexes to Regulation (EU) No 649/2012 the amendments set out in Regulation (EU) No 73/2013.
- (2) By Decision 2008/934/EC⁵, the Commission decided not to include the substances acetochlor, asulam, chloropicrin and propargite as active substances in Annex I to Council Directive 91/414/EEC⁶, with the effect that those substances are banned from

¹ OJ L 201, 27.7.2012, p. 60.

² OJ L 63, 6.3.2003, p. 29.

³ Regulation (EC) No 689/2008 of the European Parliament and of the Council of 17 June 2008 concerning the export and import of dangerous chemicals (OJ L 204, 31.7.2008, p. 1).

⁴ Commission Regulation (EU) No 73/2013 of 25 January 2013 amending Annexes I and V to Regulation (EC) No 689/2008 of the European Parliament and of the Council concerning the export and import of dangerous chemicals (OJ L 26, 26.1.2013, p. 11).

⁵ Commission Decision 2008/934/EC of 5 December 2008 concerning the non-inclusion of certain active substances in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing these substances (OJ L 333, 11.12.2008, p. 11).

⁶ Council Directive 91/414/EEC of 15 July 1991 concerning the placing of plant protection products on the market (OJ L 230, 19.8.1991, p. 1).

pesticide use and thus should be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012. However, the addition of acetochlor, asulam, chloropicrin and propargite to Annex I to Regulation (EU) No 649/2012 was suspended due to a new application for inclusion of those substances in Annex I to Directive 91/414/EEC submitted pursuant to Article 13 of Commission Regulation (EC) No 33/2008⁷. That new application resulted in the adoption of Implementing Regulations (EU) No 1372/2011⁸, (EU) No 1045/2011⁹, (EU) No 1381/2011¹⁰ and (EU) No 943/2011¹¹, by which the Commission decided not to approve the substances acetochlor, asulam, chloropicrin and propargite, respectively, as active substances under Regulation (EC) No 1107/2009, with the effect that they remain banned from pesticide use. Therefore, the substances acetochlor, asulam, chloropicrin and propargite should be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.

- (3) By Decision 2008/934/EC, the Commission decided not to include the substance flufenoxuron as an active substance in Annex I to Directive 91/414/EEC and by Decision 2012/77/EU¹² it decided not to include that substance as an active substance in Annex I, IA or IB to Directive 98/8/EC of the European Parliament and of the Council¹³ for product type 18. Flufenoxuron is therefore severely restricted for pesticide use and should be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012. The addition of flufenoxuron to Annex I to Regulation (EU) No 649/2012 was, however, suspended due to a new application for inclusion of that substance in Annex I to Directive 91/414/EEC submitted pursuant to Article 13 of Regulation (EC) No 33/2008. That new application resulted in the adoption of Implementing Regulation (EU) No 942/2011¹⁴, by which the Commission

⁷ Commission Regulation (EC) No 33/2008 of 17 January 2008 laying down detailed rules for the application of Directive 91/414/EEC as regards a regular and an accelerated procedure for the assessment of active substances which were part of the programme of work referred to in Article 8(2) of that Directive but have not been included into its Annex I (OJ L 15, 18.1.2008, p. 5).

⁸ Commission Implementing Regulation (EU) No 1372/2011 of 21 December 2011 concerning the non-approval of the active substance acetochlor, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Decision 2008/934/EC (OJ L 341, 22.12.2011, p. 45).

⁹ Commission Implementing Regulation (EU) No 1045/2011 of 19 October 2011 concerning the non-approval of the active substance asulam, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Decision 2008/934/EC (OJ L 275, 20.10.2011, p. 23).

¹⁰ Commission Implementing Regulation (EU) No 1381/2011 of 22 December 2011 concerning the non-approval of the active substance chloropicrin, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Decision 2008/934/EC (OJ L 343, 23.12.2011, p. 26).

¹¹ Commission Implementing Regulation (EU) No 943/2011 of 22 September 2011 concerning the non-approval of the active substance propargite, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Decision 2008/934/EC (OJ L 246, 23.9.2011, p. 16).

¹² Commission Decision 2012/77/EU of 9 February 2012 concerning the non-inclusion of flufenoxuron for product type 18 in Annex I, IA or IB to Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market (OJ L 38, 11.2.2012, p. 47).

¹³ Directive 98/8/EC of the European Parliament and of the Council of 16 February 1998 concerning the placing of biocidal products on the market (OJ L 123, 24.4.1998, p. 1).

¹⁴ Commission Implementing Regulation (EU) No 942/2011 of 22 September 2011 concerning the non-approval of the active substance flufenoxuron, in accordance with Regulation (EC) No 1107/2009 of the

decided not to approve flufenoxuron as an active substance under Regulation (EC) No 1107/2009. Therefore, the substance flufenoxuron should be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.

- (4) By Decision 2012/257/EU¹⁵, the Commission decided not to include the substance naled for product type 18 in Annex I, IA or IB to Directive 98/8/EC and by Decision 2005/788/EC¹⁶, it decided not to include that substance in Annex I to Directive 91/414/EEC. Naled is therefore banned from pesticide use and should thus be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012.
- (5) By Decisions 2009/65/EC¹⁷, 2009/859/EC¹⁸ and 2008/769/EC¹⁹, the Commission decided not to include 2-naphthoxyacetic acid, diphenylamine and propanil, respectively, as active substances in Annex I to Directive 91/414/EEC. Those substances are therefore banned from pesticide use and should thus be added to the lists of chemicals in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012. The addition of 2-naphthoxyacetic acid, diphenylamine and propanil to Part 2 of Annex I to Regulation (EU) No 649/2012 was, however, suspended due to a new application for inclusion in Annex I to Directive 91/414/EEC submitted pursuant to Article 13 of Regulation (EC) No 33/2008. That new application resulted in the adoption of Implementing Regulations (EU) No 1127/2011²⁰, (EU) No 578/2012²¹ and (EU) No 1078/2011²², by which the Commission decided not to approve the substances 2-naphthoxyacetic acid, diphenylamine and propanil, respectively, as active substances under Regulation (EC) No 1107/2009, with the effect that they remain banned from pesticide use. Therefore, the substances 2-naphthoxyacetic acid, diphenylamine and

European Parliament and of the Council concerning the placing of plant protection products on the market, and amending Commission Decision 2008/934/EC (OJ L 246, 23.9.2011, p. 13).

¹⁵ Commission Decision 2012/257/EU of 11 May 2012 concerning the non-inclusion of naled for product type 18 in Annex I, IA or IB to Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market (OJ L 126, 15.5.2012, p. 12).

¹⁶ Commission Decision 2005/788/EC of 11 November 2005 concerning the non-inclusion of naled in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ L 296, 12.11.2005, p. 41).

¹⁷ Commission Decision 2009/65/EC of 26 January 2009 concerning the non-inclusion of 2-Naphthoxyacetic acid in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ L 23, 27.1.2009, p. 33).

¹⁸ Commission Decision 2009/859/EC of 30 November 2009 concerning the non-inclusion of diphenylamine in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ L 314, 1.12.2009, p. 79).

¹⁹ Commission Decision 2008/769/EC of 30 September 2008 concerning the non-inclusion of propanil in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ L 263, 2.10.2008, p. 14).

²⁰ Commission Implementing Regulation (EU) No 1127/2011 of 7 November 2011 concerning the non-approval of the active substance 2-naphthoxyacetic acid, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 289, 8.11.2011, p. 26).

²¹ Commission Implementing Regulation (EU) No 578/2012 of 29 June 2012 concerning the non-approval of the active substance diphenylamine, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 171, 30.6.2012, p. 2).

²² Commission Implementing Regulation (EU) No 1078/2011 of 25 October 2011 concerning the non-approval of the active substance propanil, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market (OJ L 279, 26.10.2011, p. 1).

propanil should be added to the list of chemicals in Part 2 of Annex I to Regulation (EU) No 649/2012.

- (6) The entry for dichlorvos in the lists of chemicals contained in Parts 1 and 2 of Annex I to Regulation (EU) No 649/2012 should be amended to reflect Commission Decision 2012/254/EU²³ not to include dichlorvos in Annex I, IA or IB to Directive 98/8/EC, which has the effect that dichlorvos is banned from pesticide use.
- (7) By Implementing Regulations (EU) No 582/2012²⁴ and (EU) No 359/2012²⁵, the Commission approved the substances bifenthrin and metam, respectively, with the effect that those substances are no longer banned from pesticide use. Consequently, the substances bifenthrin and metam should be deleted from Part 1 of Annex I to Regulation (EU) No 649/2012.
- (8) At its fifth meeting in June 2011, the Conference of the Parties to the Rotterdam Convention decided to include the substances alachlor, aldicarb and endosulfan in Annex III to that Convention, with the effect that those substances became subject to the Prior Informed Consent procedure under that Convention. They should therefore be removed from the list of chemicals in Part 2 of Annex I to Regulation (EU) No 649/2012 and added to the list of chemicals in Part 3 of that Annex.
- (9) The substance cyanamide should be removed from Part 2 of Annex I to Regulation (EU) No 649/2012 since evidence was submitted that Commission Decision 2008/745/EC²⁶ not to include cyanamide in Annex I to Directive 91/414/EEC does not amount to a severe restriction of the use of the substance at the level of the category "pesticide", considering that cyanamide has important uses in the subcategory "other pesticide including biocides". Cyanamide has been identified and notified for evaluation under Directive 98/8/EC. Biocidal products containing cyanamide may thus continue to be authorised by Member States in accordance with their national rules, until a decision under that Directive is taken.
- (10) Following the decision taken under the Stockholm Convention on Persistent Organic Pollutants to list the substance endosulfan in Part 1 of Annex A to that Convention, that substance was included in Part A of Annex I to Regulation (EC) No 850/2004 of

²³ Commission Decision 2012/254/EU of 10 May 2012 concerning the non-inclusion of dichlorvos for product type 18 in Annex I, IA or IB to Directive 98/8/EC of the European Parliament and of the Council concerning the placing of biocidal products on the market (OJ L 125, 12.5.2012, p. 53).

²⁴ Commission Implementing Regulation (EU) No 582/2012 of 2 July 2012 approving the active substance bifenthrin, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 173, 3.7.2012, p. 3).

²⁵ Commission Implementing Regulation (EU) No 359/2012 of 25 April 2012 approving the active substance metam, in accordance with Regulation (EC) No 1107/2009 of the European Parliament and of the Council concerning the placing of plant protection products on the market, and amending the Annex to Commission Implementing Regulation (EU) No 540/2011 (OJ L 114, 26.4.2012, p. 1).

²⁶ Commission Decision 2008/745/EC of 18 September 2008 concerning the non-inclusion of cyanamide in Annex I to Council Directive 91/414/EEC and the withdrawal of authorisations for plant protection products containing that substance (OJ L 251, 19.9.2008, p. 45).

the European Parliament and of the Council²⁷. Consequently, endosulfan should be added to Part 1 of Annex V to Regulation (EU) No 649/2012.

- (11) Regulation (EU) No 649/2012 should therefore be amended accordingly.
- (12) As, in practice, the amendments laid down in this Regulation have already been implemented by the relevant authorities and economic operators on the assumption that Regulation (EU) No 649/2012 had been amended by Commission Regulation (EU) No 73/2013, they should apply retroactively from 1 March 2014, the date when Regulation (EU) No 649/2012 started to apply,

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 third day following that of its publication in the *Official Journal of the European Union*.

It shall apply with effect from 1 March 2014.

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

Done at Brussels, 23.7.2019

For the Commission
The President
Jean-Claude JUNCKER

²⁷ 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).