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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND
THE COUNCIL**

**on the exercise of the delegation conferred on the Commission pursuant 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**

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1. INTRODUCTION AND LEGAL BASIS

Regulation (EU) No 649/2012¹ (hereinafter, “the PIC Regulation”) 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. The requirements and procedures for export and import of certain hazardous chemicals, in particular those that are subject to the prior informed consent procedure under the Rotterdam Convention, are laid down in the PIC Regulation.

Article 23(4) of the PIC Regulation empowers the Commission to adopt delegated acts subject to the conditions laid down in Article 26 of that Regulation in order to:

- include a chemical in Part 1 or 2 of Annex I pursuant to paragraph 2 of Article 23 following final regulatory action at Union level, and other amendments of Annex I, including modifications to existing entries [Article 23(4)(a)],
- include a chemical that is subject to Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants³ in Part 1 of Annex V [Article 23(4)(b)],
- include a chemical already subject to an export ban at Union level in Part 2 of Annex V [Article 23(4)(c)],
- modify existing entries in Annex V [Article 23(4)(d)],
- amend Annexes II, III, IV and VI [Article 23(4)(e)].

This report is to meet the obligation set for the Commission by Article 26(2) of the PIC Regulation. Article 26(2) requires the Commission to present to the European Parliament and to the Council a report on the exercise of the delegation conferred on the Commission by the PIC Regulation. The report shall be drawn up not later than nine months before the end of the five-year period of the delegation, running initially from 1 March 2014 and for this second report from 1 March 2019. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

¹ 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 (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 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) has been repealed and replaced by Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

2. EXERCISE OF THE DELEGATION

During the period concerned by this report, the Commission adopted four delegated acts in order to amend certain non-essential elements of the PIC Regulation. Those delegated acts were adopted on the basis of Article 23(4)(a) of the PIC Regulation specifying: *“In order to adapt this Regulation to technical progress, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 concerning the inclusion of a chemical in Part 1 or 2 of Annex I pursuant to paragraph 2 of Article 23 following final regulatory action at Union level, and other amendments of Annex I, including modifications to existing entries”*; on the basis of Article 23(4)(b) specifying: *“In order to adapt this Regulation to technical progress, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 concerning the inclusion of a chemical that is subject to Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants in Part 1 of Annex V”*; on the basis of Article 23(4)(c) specifying: *“In order to adapt this Regulation to technical progress, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 concerning the inclusion of a chemical already subject to an export ban at Union level in Part 2 of Annex V”*; and on the basis of Article 23(4)(d) specifying: *“In order to adapt this Regulation to technical progress, the Commission shall be empowered to adopt delegated acts in accordance with Article 26 concerning modifications to existing entries in Annex V”*.

The following acts were adopted:

2.1. Commission Delegated Regulation (EU) 2019/330⁴

This legal act was adopted on the basis of points (a), (b), (c) and (d) of Article 23(4) of the PIC Regulation. The approach followed in the delegated act to determine which chemicals should be listed in Annex I and in which part they should be listed was subject to discussions and consultations within an expert group consisting of representatives of Member States’ designated national authorities for the PIC Regulation, of the European Chemicals Agency, of industry and of the civil society (hereinafter, “PIC DNA Expert Group”) in the meetings of 24 April 2018 and 2 October 2018. Those meetings of the PIC DNA Expert Group also discussed the listing of certain chemicals in Parts 1 and 2 of Annex V. The PIC DNA Expert Group was consulted on the draft Commission Delegated Regulation, which was made available in advance of the second meeting. The Commission adopted the delegated act on 11 December 2018 and notified it to the European Parliament and the Council. Neither institution objected to the delegated act within the period of two months provided for in Article 26(5) of the PIC Regulation. Commission Delegated Regulation (EU) 2019/330 was published on 27 February 2019 and applies from 1 May 2019.

2.2. Commission Delegated Regulation (EU) 2019/1701⁵

This legal act was adopted on the basis of points (a) and (b) of Article 23(4) of the PIC Regulation. The act was necessary to ensure legal clarity and consistency, since the

⁴ Commission Delegated Regulation (EU) 2019/330 of 11 December 2018 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 (OJ L 59, 27.2.2019, p. 1).

⁵ Commission Delegated Regulation (EU) 2019/1701 of 23 July 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 (OJ L 260, 11.10.2019, p. 1).

amendments made by Commission Regulation (EU) No 73/2013⁶ to Regulation (EC) No 689/2008 of the European Parliament and of the Council⁷ were not duly reflected in the PIC Regulation. The PIC Regulation is a recast of Regulation (EC) No 689/2008 and replaced that Regulation with effect from 1 March 2014. It should be noted that Regulation (EU) No 73/2013 was adopted on 25 January 2013 but was only applicable from 1 April 2013, thus after the adoption of the PIC Regulation, which was 4 July 2012. It was therefore necessary to formally reflect in the Annexes to the PIC Regulation the amendments set out in Regulation (EU) No 73/2013. The Commission adopted the delegated act on 23 July 2019 and notified it to the European Parliament and the Council. Neither institution objected to the delegated act within the period of two months provided for in Article 26(5) of the PIC Regulation. Commission Delegated Regulation (EU) 2019/1701 was published on 11 October 2019 and applies from 1 March 2014.

2.3 Commission Delegated Regulation (EU) 2020/1068⁸

This legal act was adopted on the basis of points (a) and (c) of Article 23(4) of the PIC Regulation. The approach followed in the delegated act to determine which chemicals should be listed in Annex I and in which part they should be listed was subject to discussions and consultations within the PIC DNA Expert Group in the meetings of 9 April 2019 and 15 October 2019. Those meetings of the PIC DNA Expert Group also discussed the listing of certain chemicals in Part 2 of Annex V. The PIC DNA Expert Group was consulted on the draft Commission Delegated Regulation, which was made available in advance of the second meeting. The Commission adopted the delegated act on 15 May 2020 and notified it to the European Parliament and the Council. Neither institution objected to the delegated act within the period of two months provided for in Article 26(5) of the PIC Regulation. Commission Delegated Regulation (EU) 2020/1068 was published on 21 July 2020 and applies from 1 September 2020.

2.4 Commission Delegated Regulation (EU) 2022/643⁹

This legal act was adopted on the basis of points (a), (b), (c) and (d) of Article 23(4) of the PIC Regulation. The approach followed in the delegated act to determine which chemicals should be listed in Annex I and in which part they should be listed was subject to discussions and consultations within the PIC DNA Expert Group in the meetings of 10 July 2020, 5 November 2020, 23 April 2021 and 14 October 2021. Those meetings of the PIC DNA Expert Group also discussed the listing of certain chemicals in Parts 1 and 2 of Annex V. The PIC DNA Expert Group was consulted on the draft Commission Delegated Regulation, which was made available in advance of three meetings. The Commission adopted the delegated act on 10 February 2022 and notified it to the European Parliament and the Council. Neither institution objected to the delegated act within the period of two months provided for in

⁶ 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).

⁷ 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).

⁸ Commission Delegated Regulation (EU) 2020/1068 of 15 May 2020 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 (OJ L 234, 21.7.2020, p. 1).

⁹ Commission Delegated Regulation (EU) 2022/643 of 10 February 2022 amending Regulation (EU) No 649/2012 of the European Parliament and of the Council as regards the listing of pesticides, industrial chemicals, persistent organic pollutants and mercury and an update of customs codes (OJ L 118, 20.4.2022, p. 14).

Article 26(5) of the PIC Regulation. Commission Delegated Regulation (EU) 2022/643 was published on 20 April 2022 and applies from 1 July 2022.

2.5 Delegated powers not used during the reporting period

The delegated powers of the PIC Regulation to adopt delegated acts in accordance with Article 23(4)(e) were not exercised during the reporting period since there were no changes in Union law or under the Convention requiring this. Since those changes can occur at any time, it is important that the Commission is empowered to adopt delegated acts that adapt the PIC Regulation to technical progress in line with those changes.

3. CONCLUSION

During this second reporting period the Commission has exercised the delegated powers provided for by the PIC Regulation on four occasions and under the four legal bases referred to above. The Commission is of the view that the delegated powers conferred by Article 23(4) should be tacitly extended, including those that were not yet exercised since the need to adapt the PIC Regulation to technical progress in accordance with Article 23(4)(e) can occur at any time. The implementation of the PIC Regulation is advancing and technical and scientific progress takes place. Developments in Union law and under the Convention need to be reflected and require adaptations of the Annexes to the PIC Regulation. Therefore, the Commission will be required to adopt further delegated acts in the future in order to keep the legal framework up to date.

The Commission complies with the reporting requirement under Article 26(2) of the PIC Regulation and invites the European Parliament and the Council to take note of this report.