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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 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 from 1 March 2014. 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).

2. EXERCISE OF THE DELEGATION

During the period concerned by this report, the Commission adopted three 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”* and 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”*.

The following acts were adopted:

2.1. Commission Delegated Regulation (EU) No 1078/2014⁴

This legal act was adopted on the basis of Article 23(4)(a) 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 11 October 2013 and of 7 April 2014. The PIC DNA Expert Group was consulted on the draft Commission Delegated Regulation, which was made available in advance of the meetings. The Commission adopted the delegated act on 7 August 2014 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) No 178/2014 was published on 15 October 2014 and applies from 1 December 2014.

2.2. Commission Delegated Regulation (EU) 2015/2229⁵

This legal act was adopted on the basis of Article 23(4)(a) 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 1 October 2014 and of 21 April 2015. The PIC DNA Expert Group was consulted on the draft Commission Delegated Regulation, which was made available in advance of the meetings. The Commission adopted the delegated act on 29 September 2015 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) 2015/2229 was published on 3 December 2015 and applies from 1 February 2016.

⁴ Commission Delegated Regulation (EU) No 1078/2014 of 7 August 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 (OJ L 297, 15.10.2014, p. 1).

⁵ Commission Delegated Regulation (EU) 2015/2229 of 29 September 2015 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 (OJ L 317, 3.12.2015, p. 13).

2.3 Commission Delegated Regulation (EU) 2018/172⁶

This legal act was adopted on the basis of Article 23(4)(a) of the PIC Regulation and on the basis of Article 23(4)(b). 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 meeting of 26 April 2016. That meeting of the expert group also discussed the listing of certain chemicals in Part 1 of Annex V. The PIC DNA Expert Group was consulted on the draft Commission Delegated Regulation, which was made available in advance of the meeting. In addition, the PIC DNA Expert Group was consulted in writing after that meeting. The Commission adopted the delegated act on 28 November 2017 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) 2018/172 was published on 6 February 2018 and applies from 1 April 2018.

2.4 Delegated powers not used during the reporting period

The delegated powers of the PIC Regulation to adopt delegated acts in accordance with Articles 23(4)(c), 23(4)(d) and 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. In this context it should be noted that a further delegated act is currently being prepared that uses also Articles 23(4)(c) and 23(4)(d) as legal basis.

3. CONCLUSION

To date the Commission has exercised the delegated powers provided for by the PIC Regulation on three occasions and under the two 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 Articles 23(4)(c), 23(4)(d) and 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.

⁶ Commission Delegated Regulation (EU) 2018/172 of 28 November 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 (OJ L 32, 6.2.2018, p. 6).