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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) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants

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1. INTRODUCTION AND LEGAL BASIS

Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on Persistent organic pollutants[1] (hereinafter, "the POPs Regulation") implements the Stockholm Convention on persistent organic pollutants ("Stockholm Convention"), signed on 23 May 2001 and approved, on behalf of the European Community, by Council Decision 2006/507/EC[2]. In addition, the POPs Regulation implements the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants ('the Protocol'), approved by the Union on 19 February 2004[3]. The measures to reduce or eliminate releases form intentional production and use and from unintentional production of persistent organic pollutants are laid down in the POPs Regulation.

Article 15(1) of the POPs Regulation empowers the Commission to adopt delegated acts subject to the conditions laid down in Article 18 of this Regulation in order to amend the Annexes I, II and III to this Regulation in order to adapt them to changes to the list of substances set out in the Annexes to the Convention or the Protocol, on the basis that the Union has supported the change concerned by means of a Council decision adopted in accordance with Article 218(9) TFEU, or to modify existing entries or provisions in Annexes I and II to this Regulation in order to adapt them to scientific and technical progress.

This report is to meet the obligation set for the Commission by Article 18(2) of the POPs Regulation. Article 18(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 POPs 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 15 July 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.

2. EXERCISE OF THE DELEGATION

During the period concerned by this report, the Commission adopted six delegated acts in order to amend certain non-essential elements of the POPs Regulation. Those delegated acts were adopted on the basis of Article 15(1) of the POPs Regulation.

The following acts were adopted:

[1] OJ L 169, 25.6.2019, p. 45.
[2] 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).
[3] Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (OJ L 81, 19.3.2004, p. 37).

2.1. Commission Delegated Regulation (EU) 2020/784[4]

The approach followed in the delegated act to determine the details of the listing of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds in Part A of Annex I, in particular the exemptions, was subject to discussions and consultations within an expert group consisting of representatives of Member States' competent authorities for the POPs Regulation, of the European Chemicals Agency, of industry and of the civil society (hereinafter, "POPs Expert Group"[5]) in the meetings of 13 June 2019 and 26 November 2019. The POPs 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 8 April 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 18(6) of the POPs Regulation. Commission Delegated Regulation (EU) 2020/784 was published on 15 June 2020 and applies from 4 July 2020.

2.2. Commission Delegated Regulation (EU) 2020/1203[6]

The approach followed in the delegated act to determine the modifications of the entry for perfluorooctane sulfonic acid and its derivatives (PFOS) in Part A of Annex I was subject to discussions and consultations within the POPs Expert Group in the meetings of 13 June 2019 and 26 November 2019. The POPs 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 9 June 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 18(6) of the POPs Regulation. Commission Delegated Regulation (EU) 2020/1203 was published on 18 August 2020 and applies from 7 September 2020.

2.3 Commission Delegated Regulation (EU) 2020/1204[7]

The approach followed in the delegated act to determine the details of the listing of dicofol in Part A of Annex I was subject to discussions and consultations within the POPs Expert Group in the meeting of 26 November 2019. The POPs Expert Group was consulted on the draft Commission Delegated Regulation, which was made available in advance of the meeting. The Commission adopted the delegated act on 9 June 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 18(6) of the POPs Regulation. Commission Delegated Regulation (EU) 2020/1204 was published on 18 August 2020 and applies from 7 September 2020.

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[4] Commission Delegated Regulation (EU) 2020/784 of 8 April 2020 amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council as regards the listing of perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds (OJ L 188 I, 15.6.2020, p. 1).

[5] https://intragate.ec.europa.eu/regexpback/screen/expert-groups/details?groupId=1656

[6] Commission Delegated Regulation (EU) 2020/1203 of 9 June 2020 amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council as regards the entry for perfluorooctane sulfonic acid and its derivatives (PFOS) (OJ L 270, 18.8.2020, p. 1).

[7] Commission Delegated Regulation (EU) 2020/1204 of 9 June 2020 amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council as regards the listing of dicofol (OJ L 270, 18.8.2020, p. 4).

2.4 Commission Delegated Regulation (EU) 2021/115[8]

The approach followed in the delegated act to determine the modifications of the entry for perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds in Part A of Annex I was subject to discussions and consultations within the POPs Expert Group in the meetings of 9 June 2020 and 24 November 2020. The POPs 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 27 November 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 18(6) of the POPs Regulation. Commission Delegated Regulation (EU) 2021/115 was published on 2 February 2021 and applies from 22 February 2021.

2.5 Commission Delegated Regulation (EU) 2021/277[9]

The approach followed in the delegated act to determine the modifications of the entry for pentachlorophenol and its salts and esters in Part A of Annex I was subject to discussions and consultations within the POPs Expert Group in the meetings of 26 November 2019, 9 June 2020 and 24 November 2020. The POPs Expert Group was consulted on the draft Commission Delegated Regulation, which was made available in advance of the third meeting. The Commission adopted the delegated act on 16 December 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 18(6) of the POPs Regulation. Commission Delegated Regulation (EU) 2021/277 was published on 23 February 2021 and applies from 15 March 2021.

2.6 Commission Delegated Regulation (EU) 2022/2291[10]

The approach followed in the delegated act to determine the modifications of the entry for hexachlorobenzene in Part A of Annex I was subject to discussions and consultations within the POPs Expert Group in the meetings of 8 June 2021, 23 November 2021 and 2 June 2022. The POPs 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 8 September 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 Article 18(6) of the POPs Regulation. Commission Delegated Regulation (EU) 2022/2291 was published on 23 November 2022 and applies from 13 December 2022.

2.7 Delegated powers not used during the reporting period

The delegated powers of the POPs Regulation to adopt delegated acts in accordance with Articles 4(3) and 10(2) were not exercised during the reporting period since there were no requests from Member States to permit the manufacturing and use of a substance as a closed-

[8] Commission Delegated Regulation (EU) 2021/115 of 27 November 2020 amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council as regards perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds (OJ L 36, 2.2.2021, p. 7).

[9] Commission Delegated Regulation (EU) 2021/277 of 16 December 2020 amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants as regards pentachlorophenol and its salts and esters (OJ L 62, 23.2.2021, p. 1).

[10] Commission Delegated Regulation (EU) 2022/2291 of 8 September 2022 amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants, as regards hexachlorobenzene (OJ L 303, 23.11.2022, p. 19).

system site-limited intermediate in accordance with Article 4(3) nor was there any need to change the list of substances subject to mandatory monitoring in accordance with Article 10(2). Since the situation can change at any time, it is important that the Commission is empowered to adopt delegated acts that adapt the POPs Regulation to reflect those developments.

3. CONCLUSION

During this reporting period the Commission has exercised the delegated powers provided for by the POPs Regulation on six occasions and under the legal basis referred to above. The Commission is of the view that the delegated powers conferred by Articles 4(3), 10(2) and 15(1) should be tacitly extended, including those that were not yet exercised since the need to amend the POPs Regulation to reflect developments in accordance with Articles 4(3) or 10(2) can occur at any time. The implementation of the POPs 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 POPs 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 18(2) of the POPs Regulation and invites the European Parliament and the Council to take note of this report.