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COVER NOTE

From:	Secretary-General of the European Commission, signed by Ms Martine DEPREZ, Director
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To:	General Secretariat of the Council

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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 8.9.2022 amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants, as regards hexachlorobenzene

Delegations will find attached document C(2022) 6122 final.

Encl.: C(2022) 6122 final



Brussels, 8.9.2022
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COMMISSION DELEGATED REGULATION (EU) .../...

of 8.9.2022

amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants, as regards hexachlorobenzene

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 1 of Regulation (EU) 2019/1021 ('the POPs Regulation') establishes as the objective of that Regulation to protect human health and the environment from Persistent Organic Pollutants ('POPs') by prohibiting, phasing out as soon as possible, or restricting the manufacturing, placing on the market and use of substances subject to the Stockholm Convention on POPs.

Hexachlorobenzene (HCB) is listed in Annex I to the POPs Regulation without an Unintentional Trace Contaminant (UTC) limit value. HCB was mainly used in the EU as pesticide. At the time of the listing in the POPs Regulation in 2004, it was considered that no limit value was needed because it was not expected to find HCB in substances, mixtures or articles. An inquiry was recently made to the European Chemicals Agency (ECHA) concerning a limit value for the presence of HCB as an impurity in substances. HCB is also known to be formed as a by-product during the manufacture of other chemicals (mainly chlorinated solvents) and pesticides, and in the waste streams of chloralkali plants and wood-preserving processes. From REACH registration dossiers, it is moreover known that the main use of substances containing HCB as a constituent or impurity relate to use in inks, coatings, paints and toners, use in wood application, in textile application and in plastics.

The lack of a specified UTC limit value results in legal uncertainty since stakeholders do not know whether a limit value applies nor which value. The absence of a harmonised limit value would be interpreted as if the limit of detection applies, which could be considered as a disproportionate restriction since it would prevent the placing on the market of any substance, mixture or article containing HCB. Article 4(1)(b) of the POPs Regulation sets out that the prohibition of the manufacturing, placing on the market and use of substances listed in Annex I, whether on their own, in mixtures or in articles, does not apply in the case of a substance present as an unintentional trace contaminant, as specified in the relevant entries of Annex I, in substances, mixtures or articles. The presence of HCB as UTC in substances, mixtures or articles should therefore be specified in Annex I.

In view of the currently available information, the setting of a limit value for the presence of HCB as UTC in substances, mixtures or articles is considered appropriate. Such UTC would clarify the legal situation and would facilitate harmonised enforcement throughout the Union.

Based on the available information, that limit value should be set at 10 mg/kg (0,001 % by weight) for the presence of HCB as UTC in substances, mixtures and articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The POPs expert group was consulted on the draft delegated act in two meetings (the 'POP CA meeting') on 8 June and 23 November 2021 and comments were taken into account. The group is composed of all the relevant stakeholders - representatives of Member States, ECHA, the chemicals industry and the civil society.

A public consultation was carried out on the draft delegated act from 8 November to 6 December 2021. Three comments were received from stakeholders. Comments went in opposite directions, i.e. two stakeholders asked for a higher UTC limit value, while one

requested a lower UTC limit value. Taking into account all available information, including that received through the various consultations, and after further discussion with the POPs expert group on 2 June 2022, the Commission concluded to proceed the limit value originally proposed.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act amends the entry for hexachlorobenzene in Annex I to Regulation (EU) 2019/1021 in order to adapt it to scientific and technical progress. The legal basis for the proposed delegated act is Article 15(1) of Regulation (EU) 2019/1021.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants¹, and in particular Article 15(1) thereof,

Whereas:

- (1) Regulation (EU) 2019/1021 implements the commitments of the Union under the Stockholm Convention on Persistent Organic Pollutants² and under the Protocol on Persistent Organic Pollutants to the 1979 Convention on Long-Range Transboundary Air Pollution³.
- (2) Pursuant to Article 3(1) of Regulation (EU) 2019/1021, the manufacturing, placing on the market and use, whether on their own, in mixtures or in articles, of substances listed in Annex I to that Regulation are prohibited, subject to Article 4 of that Regulation.
- (3) Hexachlorobenzene is listed in Annex I to Regulation (EU) 2019/1021 without an Unintentional Trace Contaminant (UTC) limit value.
- (4) Article 15(1) of Regulation (EU) 2019/1021 empowers the Commission to adopt delegated acts to modify existing entries of Annex I to adapt them to scientific and technical progress.
- (5) The Commission has determined the presence of hexachlorobenzene as an impurity in some substances, mixtures and articles, including pesticides, chlorinated solvents, inks, coatings, paints and toners, wood application, textile application and plastics.
- (6) In order to clarify the legal situation and facilitate enforcement as regards the use of substances, mixtures or articles containing hexachlorobenzene as an unintentional trace contaminant, a UTC limit of 10 mg/kg (0,001 % by weight) should be set for hexachlorobenzene.
- (7) Regulation (EU) 2019/1021 should therefore be amended accordingly,

¹ OJ L 169, 25.6.2019, p. 45.

² OJ L 209, 31.7.2006, p. 3.

³ OJ L 81, 19.3.2004, p. 37.

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) 2019/1021 is amended in accordance with the Annex 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*.

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

Done at Brussels, 8.9.2022

For the Commission
The President
Ursula VON DER LEYEN