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NOTE

From:	Presidency/General Secretariat of the Council
To:	Permanent Representatives Committee
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on detergents and surfactants, amending Regulation (EU) 2019/1020 and repealing Regulation (EC) No 648/2004 - Preparation for the trilogue

I. INTRODUCTION

1. On 28 April 2023, the Commission adopted a proposal for a Regulation of the European Parliament and of the Council on detergents and surfactants, amending Regulation (EU) 2019/1020 and repealing Regulation (EC) No 648/2004.

2. The Proposal is based on Article 114 of the Treaty on the Functioning of the European Union (TFEU) and aims at simplifying and modernising the legal framework that detergents need to comply with in order to be placed and circulate freely in the Union market, at creating the legal basis for new innovative products like detergents containing micro-organisms, at encouraging sustainable new practices like the refill sale of detergents, as well as at introducing digital labelling and the Digital Product Passport for detergents and surfactants.

3. On 14 June 2023, the European Parliament's Committee on the Environment, Public Health and Food Safety (ENVI) appointed Ms Manuela Ripa (Greens, DE) as rapporteur for the proposal. The Committee on the Internal Market and Consumer Protection (IMCO) of the European Parliament delivered its opinion on the proposal on 24 January 2024. The Committee on Industry, Research and Energy decided not to give an opinion. ENVI voted on its final report on the proposal on 14 February 2024, which was adopted in the plenary on 27 February 2024 as Parliament's position at first reading. Since the start of the new legislative cycle, the European Parliament's Committee on the Environment, Public Health and Food Safety (ENVI) appointed Ms Majdouline Sbai (Greens, FR) as new rapporteur for the file.

4. The European Economic and Social Committee gave an opinion on the proposal on 12 July 2023.

5. The Working Party on Technical Harmonisation (Dangerous Substances - Chemicals) started the examination of the proposal on 16 May 2023 under the Swedish Presidency. Since then, 11 additional Working Party meetings have taken place under the Spanish and Belgian, Hungarian and Polish presidencies.

6. Following the examination of the text in clusters under the Belgian Presidency, the Permanent Representatives Committee adopted the Council's mandate on 14 June 2024.

7. The main amendments in the Council's mandate aim at improving the provisions related to the obligations of the economic operators, aligning the provisions on the digital product passport with the framework for setting Ecodesign requirements for sustainable products (ESPR); clarifying the role of authorised representatives; adapting the conditions of digital labelling and ensuring that appropriate transitional period is foreseen in order for Commission to roll out the necessary implementing legislation and for industry to adapt.

II. INTERINSTITUTIONAL NEGOTIATIONS – STATE OF PLAY

8. The opening political trilogue was held under the Polish Presidency on 28 January 2025. The co-legislators presented their views on the main political issues and gave a broad mandate to the subsequent technical meetings to identify and make progress on areas of compromise. Thereafter, 8 technical meetings were organised under the Polish Presidency.

9. The Working Party on (Dangerous Substances – Chemicals) was convened on 13 March, 14 April and 24 April to discuss the progress in the interinstitutional technical meetings and to prepare for the upcoming second trilogue.

10. The entire proposal has been discussed and considerable progress has been made at the technical level. Although many of the rows have been preliminary agreed, some provisions could not be agreed and therefore require a substantive discussion at political level. Namely, the biodegradability criteria, micro-organisms submission of ingredient data sheets to poison centres for non-hazardous mixtures, obligations of authorised representatives, phosphorus content, penalties and requirements measuring cups and lids.

11. The second political trilogue is scheduled for 6 May 2025 in Strasbourg and the third trilogue is tentatively scheduled for 10 June 2025.

III. PREPARATION FOR THE SECOND TRILOGUE

12. Following the discussions at the Working Party meetings, the Presidency has identified a set of key issues where it seems necessary to adjust accordingly the mandate for further negotiations in trilogue in order to close the file as soon as possible. These issues are listed below in the order of individual articles.

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13. The Presidency would like to invite COREPER to consider the following question and to express their views on possible areas of flexibility to reach a compromise.

a) Biodegradability criteria (Article 4 - Rows 103a, 135, 136-141, 141a-141d, 354-355, 384b 402, 402a, 419a, 419b, Annex I)

14. Significant progress was made at the technical level on the issue of biodegradability which has resulted in an overall compromise proposal being put on the table. On the definitions, a new definition of "films" has been added in new row 103a.

15. The future requirements for biodegradability of water-soluble polymeric films used to encapsulate detergents and for other organic ingredients intentionally added to detergents will be contained in parts "B" and "C" of Annex I. The proposed deadline for compliance with the biodegradability criteria set out in Part B of Annex I for films is 6 years from the entry into force of the Regulation (row 141a). The proposed deadline for compliance with the biodegradability criteria set out in Part C of Annex I for organic substances intentionally added in detergents in concentration of at least 10 %, other than surfactants and film polymers, is 8 years from the entry into force of the Regulation, unless if a derogation is granted in Part D of the same Annex (rows 141a and 141d).

16. Regarding the empowerment for the Commission to set out such requirements in Annex I by means of delegated acts are set out in Article 26 after the appropriate assessment has been carried out. The proposed deadline for the Commission to adopt delegated acts setting out biodegradability criteria and test methods for film polymers is 3 years from the entry into force of the Regulation (rows 141b, 141c). The proposed deadline for the Commission to adopt delegated acts setting out biodegradability criteria and test methods for organic substances intentionally added in concentration of at least 10% in detergents, other than surfactants and film polymers, is 5 years from the entry into force of the Regulation (rows 141a, 141d, 355c).

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17. The justification for proposing longer periods to assess other organic substances, is that there has been no impact assessment and significant knowledge gaps remain in the scientific analysis to determine which substances are being considered in the scope. There is therefore a need to have additional time to better identify the associated risks.

Could the delegations support all the elements of the above-mentioned compromise proposal?

b) Micro-organisms (Article 5 – Rows 97, 142-143, 355a, 355e, 355f, 420-444, 457, 467a, 438b-438d and 505-508, 539b)

18. The proposed compromise on detergents containing micro-organisms introduces an empowerment for the Commission to include the methodology for risk assessment of all micro-organisms intentionally added in detergents by amending the corresponding Annex II. The risk assessment will cover all risks associated to the use of micro-organisms in detergents, considering all possible use formats, including sprays and refill format. The delegated acts for the Commission to set out the methodology for a risk assessment at strain level and product level under all foreseeable use conditions as claimed by the manufacturer would have to be adopted by 30 months from the entry into force of the Regulation. It is proposed that such methodology should contain the criteria to determine that the detergent is safe for human health and the environment, including the dermal and respiratory sensitisation potential of products in a spray format and potential risks in case of ingestion of detergents used on surfaces in contact with food.

19. Considering that both the identification and characterisation of a micro-organism are part of its risk assessment, the proposed compromise includes a new list of identification of micro-organisms drawing inspiration from the scientific work done by the Joint Research Centre of the European Commission to support the adoption of new ECOLABEL criteria for various categories of detergents including microbial cleaning products (MCPs). The compromise proposal also removes all the dereferences to ISO standards in order to avoid a situation where such standards would have legal effects under the new Detergents Regulation.

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20. Regarding genetically modified micro-organisms, it is proposed to amend the definition of "genetically modified micro-organisms" in row 97 to align with the legal definition established under the GMO legislation (Directive 2001/18/EC). Furthermore, it is proposed to amend the provision in row 434 to introduce an exception on the ban of detergents containing intentionally added genetically modified micro-organisms for the genetically modified micro-organisms that have been authorised for such use in accordance with Part C of Directive 2001/18/EC or are exempted in accordance with Article 3(1) of that Directive. These changes are necessary because a total ban on genetically modified micro-organisms (GMMs) in detergents would be in conflict with the possibility under the Genetically Modified Organisms' (GMOs) legislation (Directive 2001/18/EC2) to authorise the placing on the market of GMOs (including GMMs) following a health and environmental risk assessment.

Could the delegations support all the elements of the above-mentioned compromise proposal?

c) Poison centres/ingredient data sheet (Article 7 – Rows 159-163h, Row 355g)

21. The Parliament has indicated its strong preference for requiring manufacturers to provide the ingredients data sheet to authorities upon placing a detergent on the market. The Parliament has also argued that the solution proposed in the Council mandate, where the obligations is to submit the ingredients data sheet "upon request from the Member States' appointed bodies" together with the possibility for Member States to lay down rules requiring that the ingredient data sheets are submitted without a formal request from the appointed bodies), would risk creating diverging practices and thereby fragmenting the Single Market, and would also risk delaying the ability of poison centres to respond in case of emergency. In the light of the above considerations and as a part of the overall compromise on this file, the Presidency suggests showing flexibility towards the Parliament's position on this point.

Could delegations show flexibility to move towards the Parliament?

22. The second issue to consider on this topic is the format for the communication of the ingredients data sheet. The Commission has highlighted during the discussions that there are several possibilities for communication of the ingredients data sheet. This could be done through the existing ECHA systems or through the Digital Product Passport, for example. The Commission has raised capacity-related concerns about the ECHA system, should this format of communication be chosen. However, Member States have insisted that the Digital Product Passport is not the appropriate tool in this case and that the solution for non-hazardous mixtures needs to be found in parallel with the existing ECHA system which enables to submit ingredient data sheets for hazardous mixtures as required under the CLP Regulation (EC) No 1272/2008. Therefore, a compromise proposal suggests including in Article 26 new paragraph 6c (row 355g) an empowerment for the Commission to adopt delegated acts amending Annex IV by setting our requirements on the way the ingredients data sheet is to be communicated in accordance with Article 7(6).

Could the delegations support the above-mentioned compromise proposal?

d) Authorised Representative (Article 8 – Rows 167-168, Rows 169-176)

23. The Parliament has insisted that they would like to keep the possibility for EU-established manufacturers to appoint an authorised representative. The Parliament has argued that this proposal is consistent with the New Legislative Framework. The Presidency suggests showing openness to Parliament's position, while maintaining the extended obligations for authorised representatives of manufacturers from third countries, as agreed in the Council mandate.

Could delegations show flexibility to move towards the Parliament?

24. In addition, the proposed compromise extends the obligations of the authorised representative of non-EU established manufacturers to ensure that he is in possession of all the necessary information to verify labelling is compliant with the requirements of the Regulation, that technical documentation exists in case of control and that the ingredients data sheet is ready to be provided and made available to competent authorities if requested.

Could the delegations support the above-mentioned compromise proposal?

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e) Topics for exchange of views at political level

25. The following topics will be subject of a discussion at political level to explore the positions of the co-legislators in view of the rest of the negotiations: phosphorus content (Article 6 and Annex III), penalties (Article 29) and requirements for measuring cups and lids (Annex V, point 7(c)). At the second trilogue, the Presidency will defend the Council mandate.

IV. CONCLUSION

26. The Permanent Representatives Committee is invited to reflect on the abovementioned questions and to express its views on possible areas of flexibility in order to engage in negotiations with the European Parliament at the next informal trilogue on 6 May 2025.

27. The Permanent Representatives Committee is therefore invited:

- to confirm the preliminary agreement reached at the technical level on the part of the text proposal, which is set out in document ST 8189 2025 ADD 1;
- to approve the revision of the Council mandate for negotiating with the Parliament on the issues listed above.

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