Council of the European Union

Brussels, 28 May 2025
(OR. en)

9019/25

Interinstitutional File:
2023/0124 (COD)

LIMITE

MI 304
ENT 69
ENV 347
CHIMIE 34
IND 144
CONSOM 85
SAN 225
CODEC 610

PUBLIC

NOTE

From:	Presidency/General Secretariat of the Council
To:	Permanent Representatives Committee
No. prev. doc.:	8189/1/25 ADD 1
No. Cion doc.:	COM(2023) 217 final
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, 12 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, 12 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 as well as on 20 May to discuss the progress in the interinstitutional technical meetings and to prepare for the upcoming second trilogue.

10. The second political trilogue took place on 6 May 2025 in Strasbourg and was successful in finding agreement on such important issues as submission of ingredient data sheets to poison centres for non-hazardous mixtures before placing on the market and obligations of authorised representatives with the agreement to mandate the technical level to fine-tune the specific provisions where necessary. During the trilogue the co-legislators also noted that their position on the future adoption of biodegradability criteria and conditions for placing on the market of detergents containing micro-organisms are quite close.

11. The entire proposal has been discussed and considerable progress has been made at the technical level. Although most of the rows have been preliminary agreed, the remaining ones could not be agreed and therefore require an additional discussion at a political level. Specifically, the modalities of adopting biodegradability criteria, the possible ban of GMOs in detergents containing micro-organisms, the potential reduction of phosphorus content in detergents, animal testing, penalties and transitional provisions.

12. The third and final trilogue is scheduled to take place on 10 June 2025 at the Council.

PUBLIC

III. PREPARATION FOR THE THIRD TRILOGUE

13. 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 trilogue negotiations in order to close the file. These issues are listed below in the order of individual articles.

14. 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)

15. 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.

16. 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.

As previously proposed during COREPER discussions before the second trilogue, the deadline for compliance with the biodegradability criteria set out in Part B of Annex I for films would be 6 years from the entry into force of the Regulation (row 141a). Aside from the conditions for the adoption of biodegradability of water-soluble polymeric films, Parliament and the Council keep insisting on their respective definitions of “films”. Parliament prefers a definition without a reference to “polymers” in order to ensure that the rules on biodegradability are future proof. The Council, on the other hand, prefers a definition reflecting the current state of the art, whereby polymeric films are used to encapsulate detergents. A new proposal has emerged which combines both approaches and aligns the obligations accordingly.

PUBLIC

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 a derogation is granted in Part D of the same Annex (rows 141a and 141d).

Parliament and the Council have largely converged towards a possible compromise around the timeline that was suggested by the Council. However, Parliament is insisting that the 10% limit for organic substances other than surfactants and film polymers is arbitrary and a significant risks of circumventing the rules, i.e. by artificially keeping the content of organic substances just under 10% in order to avoid fulfilling the requirements. In addition, the limitation of the application of the biodegradability criteria to substances with a concentration of 10% was not part of the original Council mandate which was adopted in June 2024.At the same time Commission keeps highlighting that it is not clear at this point whether it will be feasible to come up with the biodegradability criteria for all organic ingredients, particularly within the given deadline.

Considering the above, could the delegations support removing limitation of the application of the biodegradability criteria for other the organic substances to substances with 10% concentration?

b) Micro-organisms – GMO ban (Article 5 – Row 434)

17. During the previous COREPER discussion on genetically modified micro-organisms, it was proposed to amend the provision in row 434 to introduce an exception to the ban of detergents containing intentionally added genetically modified micro-organisms for the genetically modified micro-organisms that had been authorised for such use in accordance with Part C of Directive 2001/18/EC or were exempted in accordance with Article 3(1) of that Directive. During the second trilogue and the follow-up technical meetings the Parliament questioned the need for such a derogation and insisted on the need to maintain the original Commission proposal wording of this element of the Regulation. The original Council mandate from June 2024 also did not amend this part of the Commission proposal.

Could the delegations support going back to the original Council mandate?

c) Phosphorus content (Article 6 and Annex III – Rows 19, 90a-90d, 447)

18. The Parliament has made it clear that it strongly favours further reducing the phosphorus content of detergents, and that some flexibility on the part of the Council will be necessary for reaching the agreement with Parliament on this file, despite the fact that the Commission did not propose such a reduction at the time the proposal was adopted, nor did it conduct an impact assessment to consider all relevant implication of such significant policy change.

Option 1 - compromise for lowering of current limit values for phosphorus

19. One of the solutions is to consider revised limits as proposed informally by the Parliament during negotiations to revise Annex III as set out below together with the empowerment for the Commission to adopt delegated act in case where there is unpredicted, negative outcome in the following wording:

Article 26 (…)

The Commission is empowered to adopt delegated acts amending Annex III, in duly justified situations, where there is evidence that the use of alternatives to phosphorus compounds produces detrimental impacts on the environment, the efficiency of products, in particular industrial and institutional detergents, or seriously affects the availability or affordability of products.

Importantly, due to the proposed exemption, the new phosphorus limits will not apply to detergents that are also biocidal products under Regulation (EU) No 528/2012 or medical devices under Regulation (EU) No 2017/745.

It is also important to note that new proposed phosphorus limits (the table below) would apply only to the intentional use of the phosphorus in detergent formulations, so any traces or impurities would be exempted.

Detergent	**Limitations**
Consumer laundry detergents	Transition period 5 years - 0.2 (light-duty) - 0.4 (heavy-duty) - Stain removers: 0.08 (in-wash), 0.04 (pre-treatment)
Consumer automatic dishwasher detergents	Transition period 5 years - 0.2 (detergents) - 0.05 (rinse aids)
Consumer hand dishwashing detergents	Transition period 5 years 0.1 g/l P (phosphates or P compounds).
Consumer hard surface cleaners	Transition period 5 years Set 2 g/l for kitchen/sanitary cleaners all-purpose cleaners (0.02 g/l). window cleaners phosphate-free.
Industrial and institutional laundry detergents	Transition period for all categories to 7 years, citing more than 8-year precedent (2004). - 0.75 g/kg (light soil) - 1.25 (medium soil) - 1.75 (heavy soil)
Industrial and institutional dishwasher detergents	Transition period for all categories to 7 years, citing +/- 8-year precedent (2004).

PUBLIC

	- Pre-soak: 1.25 g/l - Detergents: 0, 5 – 0,75 g/l – 1 g/l (soft-medium-hard) - Rinse aids: 0.03 g/l

PUBLIC

Option 2 - obligation for the Commission to adopt delegated acts amending Annex III and lowering the phosphorus limit values within 2 years (from entry into force).

As an alternative to option 1 and as a way to reach the overall compromise on this proposal, the Presidency proposes to introduce an additional empowerment for the Commission in order to anticipate the lowering phosphorus limit values through amendment of Annex III by means of delegated acts, after Commission has had some time to carry out an impact assessment, as described in the compromise wording below. A proposal for an additional empowerment for Commission to act in case there are unintended negative consequences of the lowering of phosphorus limits is also included.

Article 26 (7)

By [at least 2 years after the entry into force of this Regulation] the Commission shall adopt delegated acts amending Annex III, by further reducing the existing limit values for phosphorus and phosphorus compounds for consumer automatic dishwasher detergents and consumer laundry detergents and setting out limit values for consumer hard surface cleaning products, consumer hand dishwashing detergents, industrial and institutional laundry detergents and industrial and institutional automatic dishwasher detergents.

In adopting those delegated acts, the Commission shall take into account the impact on the environment, the availability of suitable alternatives with less or no phosphorus and the socio-economic impact of substitution. The Commission shall also introduce transitional arrangements and may defer the application of the new limits by a period of maximum 3 years from the entry into force of the respective delegated acts.

Could delegations accept Option 1 or Option 2?

d) Penalties (Article 29 – Rows 377, 377a)

20. On the question of penalties, the Council stands firmly on its position as this is a very sensitive point for the Member States. While penalties need to be effective, proportionate and dissuasive to ensure compliance with the legislation, the instrument remains a Member State competence, and the scope of penalties should not be specified in the Article.

21. The Presidency made it clear that the current position of the Parliament which calls for financial penalties, that are proportionate to the turnover of the legal person committing the infringement rather than being linked to the gravity of the infringement, is not reasonable as this could lead to very large fines being imposed on large economic operators for a very minor infringement.

22. Nonetheless, in order to reach an agreement in the trilogue, the Presidency would like to ask whether the delegations could show openness to the Parliament on this issue.

Could the delegation show flexibility towards the Parliament's position?

e) Animal testing (Article 6a – Rows 21a, 145c-145m)

23. Considering the Parliament's strong preference to include a reference to a ban of the animal testing and prohibiting the placing on the market of detergents and surfactants which have been subject to the latter, which is inspired by a similar article in the Cosmetic Products Regulation (EC) No 1223/2009, the Commission has put forward a compromised proposal at technical level to better align this proposal to the detergents sector needs.

24. The compromise supports the Parliament's position in clarifying that the conformity of the Regulation should be determined using non-animal testing methods that are validated at Union or international levels.

PUBLIC

25. In exceptional cases, where safety concerns arise regarding a detergent ingredient, the Commission may, on the basis of its own initiative or on the basis of a reasoned request from an economic operator or a Member State, adopt an implementing decision to grant a derogation. The request must include an evaluation and justification for animal testing, and the Commission will set conditions on the derogation's objectives, duration, and reporting. Such derogations are only granted if the ingredient is essential, irreplaceable, and the need for animal testing is justified.

Bearing in mind that first choice of the Presidency would be defending the Council position, could the delegation show flexibility towards the Parliament's position, if needed?

f) Transitional provisions (Article 34-35 – Rows 389-390, 393)

On the question of transitional periods, the Council stands firmly on its position as this is a very sensitive point for the Member States. The Parliament has expectation to shorten those date of application to align it with the original Commission proposal, namely 30 months after the date of entry into force. *Could delegations accept that the date of application of the Regulation is set at 36 months after the date of entry into force, if needed?*

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 10 June 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 9019 2025 ADD 1;
- to approve the revision of the Council mandate for negotiating with the Parliament on the issues listed above.

PUBLIC