



Council of the European Union
General Secretariat

Brussels, 06 December 2023

**Interinstitutional files:
2023/0124 (COD)**

WK 16484/2023 INIT

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NOTE

From:	SE Delegation
To:	Working Party on Technical Harmonisation (Dangerous Substances - Chemicals)
N° Cion doc.:	ST 8904 2023 ADD 1-7
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 - Comments by SE, WP on 31/10/2023



28 November 2023
KN2023/04260

Ministry of Climate and Enterprise
Division for the Circular Economy, Chemicals
and Radiation

chemicals@consilium.europa.eu

SE comments on the Clusters 1, 2 and 3 of the Detergents proposal, as described in the Presidency flash WK 13972/23

Sweden welcomes the possibility to send written comments on the clusters 1, 2 and 3 of the Detergents proposal, as described in the Presidency flash WK 13972/23.

SE would like to highlight the following issues:

- Add requirements on biodegradability for plastics in detergent capsules.
- Update outdated test methods in Annex II
- Extend the restrictions of phosphorus to also include products for professional use
- Add regular reviews of the product requirements.
- Avoid requirements on specific reporting formats for technical documentation.
- Delete requirements on market surveillance that duplicate or contradict provisions in regulation (EU) 2019/10120.
- Avoid double labelling of biocidal ingredients.
- Ensure that labelling of products in refill formats is harmonised with CLP.

Below are some detailed proposals as examples of our above listed main points.

Cluster 1 - Product requirements

Biodegradability (Article 4, Annex I and Article 32)

Plastic capsules containing detergents may contribute to pollution by the spread of microplastics in the environment if the plastic is not fully degradable. The delegated powers given to the Commission in Article 26.6 does not include any trigger on when the preparation of delegated acts shall start. Thus, Sweden proposes the addition of a requirement that plastics, such as capsules with washing and cleaning agents, must be biodegradable, as well as requirements for regular reviews of degradability requirements, e.g. for substances other than surfactants in cleaning agents.

Article 4

1. Detergents, ~~and~~ surfactants and plastic film enclosing detergents shall comply with the biodegradability requirements laid down in Annex I.

Annex I

2a. Plastic film enclosing (consumer) laundry detergents and (consumer) automatic dishwasher detergents shall be ultimately biodegradable as determined in accordance with the criteria laid down in point 3.

Article 32a

Review of biodegradability requirements

1. By [OP: please insert the date = 3 years from the date of application of this Regulation], the Commission shall assess the effectiveness and relevance of the requirements of this Regulation for the biodegradability requirements in Annex I.

2. After [OP: please insert the date = 3 years from the date of application of this Regulation] the Commission shall regularly, and at least every 4th year, perform a review of Annex I.

Detergents containing micro-organisms (Article 5, Annex II and Article 32) –

Sweden welcomes that the proposal also covers products with the intentional addition of microorganisms, as these can in many cases be

alternatives to substances hazardous to health and the environment. Sweden has noticed that some of the test methods for microorganisms listed in Annex II to the proposal are out of date and should therefore be updated. Sweden proposes that the review clause in Article 32 should also include recurring reviews at fixed time intervals after the first three years.

Annex II

2. *The following pathogenic micro-organisms shall not be present in any of the strains included in the finished product when screened using the indicated test methods or equivalent:*

- (a) *E. coli*, test method ISO 16649-3 ~~2005~~**2015**;
- (b) *Streptococcus (Enterococcus)*, test method ISO 21528-1:~~2004~~**2017**;

Article 32

Micro-organisms review

1. *By [OP: please insert the date = 3 years from the date of application of this Regulation], the Commission shall assess the effectiveness and relevance of the requirements of this Regulation for detergents containing micro-organisms as well as the possibility to include new micro-organisms or strains of micro-organisms allowed in detergents in Annex II.*

2. *After [OP: please insert the date = 3 years from the date of application of this Regulation] the Commission shall regularly, and at least every 4th year, perform a review of Annex II.*

Limitations on the content of phosphates and other phosphorus compounds (Article 6, Annex III and Article 32)

The Commission proposal does not include any extended phosphorus restrictions for products for professional use. The inclusion of extended phosphorus restrictions for products for professional use will promote the development of efficient alternatives to phosphorus in all washing and cleaning agents. Sweden proposes that the restriction of phosphorus is extended to also include washing and cleaning agents for professional use and that a requirement for regular review of Annex III is introduced.

Annex III	
<i>Detergent</i>	<i>Limitations</i>

<i>Consumer laundry detergents</i>	<p><i>Shall not be placed on the market if the total content of phosphorus is equal to or greater than 0,5 grams in the recommended quantity of the detergent to be used in the main cycle of the washing process for a standard washing machine load as defined in Part B of Annex V for hard water:</i></p> <ul style="list-style-type: none"> <i>– for ‘normally soiled’ fabrics in the case of heavy-duty detergents,</i> <i>– for ‘lightly soiled’ fabrics in the case of detergents for delicate fabrics.</i>
<i>Consumer automatic dishwasher detergents</i>	<i>Shall not be placed on the market if the total content of phosphorus is equal to or greater than 0,3 grams in the standard dosage as defined in Part B of Annex V.</i>
<i>Professional automatic dishwasher detergents</i>	<i>Shall not be placed on the market if the total content of phosphorus is equal to or greater than [x] grams in the standard dosage as defined in [Y].</i>
<i>Hand dishing detergents</i>	<i>Shall not be placed on the market if the total content of phosphorus is equal to or greater than [x1] grams in the standard dosage as defined in [Y1].</i>

Article 32b

Phosphates and other phosphorus compounds review

1. By [OP: please insert the date = 3 years from the date of application of this Regulation], the Commission shall assess the effectiveness and relevance of the requirements of this Regulation for detergents containing phosphates and other phosphorus compounds in Annex III.

2. After [OP: please insert the date = 3 years from the date of application of this Regulation] the Commission shall regularly, and at least every 4th year, perform a review of Annex III.

Cluster 2 – NLF & Market Surveillance

Authorised representative (Article 2(16) and Article 8)

Definitions, roles, obligations and responsibilities should where possible be adapted to the CLP regulation to make the legal framework coherent and avoid that the responsibility for similar requirements on the products is shared between several economic actors. In this regard, the relationship between the ‘authorised representatives’ and ‘importers’ under the proposal needs to be clarified. Sweden is of the opinion that when detergents are imported from third countries, in general the importer should be responsible for compliance, in accordance with the NLF. However, there are instances where this is not always sufficient, for example when consumers import products via distance sales from economic operators established outside the EU.

Rules and conditions for affixing the CE marking (Article 14, Article 7(2), Article 7(3) and Annex IV)

Sweden questions how the requirements that follow from CE marking can be combined with requirements in the CLP regulation that apply at the same time to these products, for example different definitions of roles for economic actors and their responsibilities. Sweden sees that it is justified with documentation requirements for the products, but that the rules for how the documentation must be compiled can be revised.

According to the proposed recital 44, the manufacturer, by affixing the CE marking, declares that the detergent or surfactant is in conformity *with all applicable requirements* and that the manufacturer takes full responsibility thereof.

The first question is if this is in accordance with the provisions regarding CE-marking in regulation (EC) No 765/2008. According to article 30.3, the CE marking indicates conformity of the product with all applicable requirements set out in the relevant Community harmonisation legislation *providing for its affixing*. Sweden does not agree with the conclusion that this includes the CLP-regulation, since the CLP-regulation contains no provisions on CE-marking.

And even if this interpretation in recital 44 is accepted, it would cause problems in respect of the responsibility in the supply chain. According to

the proposal, a manufacturer can be established within the EU or in a third country. As mentioned above, the manufacturer is responsible for the CE marking. However, when a mixture is imported to the EU, the importer is responsible for the conformity with the CLP-regulation, e.g. classification and labelling. It is therefore unclear if a manufacturer of a detergent in a third country can indicate conformity with the CLP-regulation by affixing the CE marking, when this manufacturer has no obligations according to the CLP regulation.

This situation will also lead to shared responsibility for labelling, since the manufacturer is responsible for the labelling according to the detergent regulation, and the importer is responsible for labelling according to the CLP-regulation.

Market surveillance (Article 22, Article 23 and Article 25)

Sweden has questions on why articles 22, 23 and 25 regarding market surveillance have been added to the regulation, and suggests that they are deleted and replaced with a reference to the market surveillance regulation, (EU) 2019/1020. The market surveillance regulation already applies to detergents. We also question if the test methods described in Annex VII are still relevant and used by authorities. If not, the Annex can be deleted from the regulation.

Cluster 3 – Labelling and digital labelling

Sweden welcomes that the proposal entails simplifications in terms of labeling requirements where equivalent requirements are set in other legislation. Regarding the proposals for the possibility of digital labeling, it is important that a system for digital product information is harmonised with other regulations under revision (e.g. CLP Regulation (EC) 1272/2008).

Sweden believes that the best protection for a consumer is that they can access essential information directly through the packaging's physical label. It is above all important that perfume substances, micro-organisms and preservatives are indicated on a physical label.

Double labelling of biocides

There is still double labeling of ingredients against the Biocidal Regulation (EU) 528/2012, which should be addressed.

Annex V

3. Preservatives shall be listed, using where possible the system referred to in Article 33 of Regulation (EC) No 1223/2009, irrespective of their concentration, ~~provided that they meet the following conditions:~~ **except for when preservatives are listed due to the labelling requirements on**

(a) ~~contribute to the qualification of the detergent as a treated articles within the meaning~~

~~of in Article 3(1), point (4)~~ **58(3)**, of Regulation (EU) No 528/2012; **or**

(b) ~~are labelled on a constituent of the detergent.~~

~~The condition listed in point (b) of the first subparagraph does not have to be met preservatives that do not exceed the elicitation thresholds referred to in point 3.4.3.3. / table 3.4.6. of Annex I to Regulation (EC) No 1272/2008 or they no longer have a preservation function in the final product even in synergies with other preservatives.~~

Sales in refill format/refill sales (Article 16(2))

Sales in refillable containers can contribute to packaging being reused and thereby to reducing packaging waste. It is positive that clear rules are introduced that ensure that consumers receive the necessary information even in the case of that type of sale. Regarding the proposals for labeling of products in refill format, it is important that this is harmonised with the requirements in the CLP Regulation, Regulation (EC) No. 1272/2008.

Entry into force and application (Article 35)

It seems to be a flaw regarding from which date the regulation shall apply. According to the second subparagraph, the regulation shall apply as of 30 months from the date of entry into force. But according to the third subparagraph it shall be directly applicable.