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NOTE

From:	DK delegation
To:	Working Party on Technical Harmonisation (Dangerous Substances - Chemicals)
N° Cion doc.:	ST 8904 2023 ADD 1-7
Subject:	Better protection of consumers and the environment from harmful substances in detergents - Danish non-paper on Detergents Regulation



Better protection of consumers and the environment from harmful substances in detergents

In the CSS, a ban of the most harmful substances in consumer products is presented. In the light of the delay of the revision of REACH and since it is highly uncertain when it will be resumed (and which of the initiatives presented in the CSS will survive), we are determined to implement the ban in the products regulations, that are presently being negotiated.

Most consumer detergents are emitted through the waste water and it is therefore important that a generic ban of substances and mixtures that are hazardous for the environment is introduced. Furthermore, consumers are exposed via the skin, directly in the case of surface cleaning products, or indirectly via residues in clothes after laundry, thus, a ban of the most harmful substances for humans should be introduced as well.

The generic ban in the EU Cosmetics Regulation has over the years proved to be well functioning, and we propose a similar mechanism for the detergents regulation by introducing a short article in the general provisions stating that detergents and surfactants must comply with the requirements in a specific annex, that contains the hazard classifications that automatically triggers a ban of the substances and mixtures with the specific classification. Accompanying this generic ban, exemptions are possible, if ECHA has found the use safe, no suitable alternatives can be found, and its use in consumer products is not prohibited in REACH. We have included in this proposal a derogation for enzymes that are vital for the sustainability of laundry detergents, but which are also classified for their inherent respiratory toxicity in the CLP regulation. In order to ensure an ongoing alignment with technological and scientific development, we suggest a provision to allow exemptions to be granted or revised by way of implementing acts.

Clarification between detergent and biocides regulation

A number of substances used in detergents have cleaning as well as biocidal functions. Thus, the biocidal- and detergents regulations have over time offered ample examples of borderline cases.

Denmark sees the revision of the detergent regulation as a most welcome opportunity to draw a clearer line between the two regulations in order to protect human health and the environment. We aim at reducing the cases where substances acting in effect

as biocides being sold as detergents, thereby circumventing the strict rules in the biocidal products regulation. In some cases, it is difficult for authorities to determine if this is done intentionally or unintentionally, because of a lack of knowledge concerning the specific characteristics and effects of substances.

We suggest that strict rules for the use in detergents should be established for substances that are subject to the biocidal products regulation: Basically, only biocides approved as preservatives in detergents or placed in annex 1 of the BPR should be used in consumer detergents. Exemptions should be allowed if certain conditions are met (ECHA has found the use safe, and no suitable alternatives exist). Ethanol or other alcohols could be mentioned as a candidate to this because of its common use as a solvent. Other examples may include citric or other acids which are both a biocidal active substance and used in detergents to remove limescale.

We acknowledge that the full range of effects of this ban of biocides in detergents are not presently fully understood. Therefore, we suggest to postpone the time until the ban takes effect with five years and to give the Commission delegated powers to place on the annex those biocidal active substances which should be allowed in detergents.

Way forward

We envision that the actual design of the ban could be carried out in the proposal at hand in the manner set out in the following annex, but are open to other suggestions. We are curious to hear your response to our suggestions and would be very happy if you would respond to this paper. We intend to raise our proposal on the next meeting in the Council Working Group on April 29th 2024.

We realise that for many Member states the set of colleagues involved in the three regulative areas - Chemicals, detergents and biocidals - might not be overlapping. We would therefore encourage you to reach out to your colleagues in the other branches and consider our suggestions.

Annex 1

Danish proposal for a general ban of the most harmful substances and biocides in detergents and surfactants to the compromise text on a revision of the detergents regulation from the Belgian Presidency

Article 6a

Substances and mixtures prohibited in detergents and surfactants

Detergents and surfactants shall comply with the requirements laid down in Annex IIIa.

Article 26

Delegated powers

[...]

10. The Commission is empowered to adopt implementing acts in accordance with Article 27 to amend Table A and B of Annex IIIa, while taking into account the conditions set out in point 3 and 4 of that annex, in order to permit a certain use of a substance or mixture that is prohibited under point 1 or 2 of that annex, or to limit a certain use that has been permitted, in detergents or surfactants.

Article 35

Entry into force and application

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 apply as of [*OP: please insert the date = 30 months from the date of entry into force of this Regulation*].

However, point 1 of Annex IIIa shall apply from [*OP: please insert the date = 60 months from the date of entry into force of this Regulation*].

ANNEX IIIa

SUBSTANCES AND MIXTURES PROHIBITED IN DETERGENTS AND SURFACTANTS

1. The presence of substances that are considered active substances under Regulation (EU) No 528/2012 is prohibited in detergents and surfactants. However, this shall not apply to biocidal products approved for use as a preservative for products during storage (product type 6) in accordance with Regulation (EU) No 528/2012 for use in detergents or surfactants or included in the review programme as set out in Commission Delegated Regulation (EU) No 1062/2014, when the substance is used as a preservative in a detergent or surfactant.

2. For detergents and surfactants, other than industrial and institutional detergents, the presence of substances or mixtures in the form classified under Regulation (EC) No 1272/2008 in any of the following categories is prohibited:

- a) carcinogenicity, germ cell mutagenicity or reproductive toxicity (CMR) category 2;
- b) endocrine disruption category 1 or 2;
- c) specific target organ toxicity category 1, either in single exposure or in repeated exposure;
- d) respiratory sensitisation category 1.

3. By way of derogation from point 1, active substances prohibited under that point may be used in detergents or surfactants if they are listed in Table A and used in accordance with the conditions set out therein, provided that

- a) It has been found safe by ECHA, and
- b) There are no suitable alternative substances or mixtures available for its intended use in the detergent or surfactant, such as a solvent or surfactant, as established by ECHA based on an analysis of alternatives.

4. By way of derogation from point 2, substances or mixtures prohibited under that point may be used in detergents or surfactants if they are listed in Table B and used in accordance with the conditions set out therein, provided that

- a) It has been found safe by ECHA when used by non-professionals taking into account exposure from other sources.
- b) There are no suitable substances or mixtures available, as established by ECHA based on an analysis of alternatives.
- c) The substance or mixture is not prohibited for use in consumer articles under Regulation (EC) No 1907/2006.

5. By way of derogation from point 2, enzymes and proteins prohibited under point 2(d) may be used in detergents and surfactants provided that the derived exposure level for consumers does not exceed 15 ng/m³.

6. The non-intended presence of a substance or mixture referred to in point 2 that stems from impurities of natural or synthetic ingredients, or from the manufacturing process and that is technically unavoidable in good manufacturing practice, shall be permitted provided that the individual concentration limit of [100] mg/kg is not exceeded.

TABLE A – Permitted uses of active substances subject to the prohibition under point 1 of this Annex

Substance	Classification	Permitted use	Maximum concentration
E.g. Isopropyl			
E.g. Acetic acid			

TABLE B - Permitted uses of substances subject to generic prohibitions under point 2 of this Annex

Substance	Classification	Permitted use	Maximum concentration