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NOTE

From: To:	Presidency Working Party on Technical Harmonisation (Dangerous Substances - Chemicals)
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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 - Presidency steering note

Working Party on Technical Harmonisation – 31 May 2024 (PM only)
Detergents and Surfactants Regulation

This steering note outlines the main adaptations proposed by the Presidency, as set out in document ST 10035/24.

Following the feedback from the delegations at the last Working Party held on 15 May and the written comments received, the Presidency would like delegations to consider the compromise options set out below and to express their views on them. The text will be discussed cluster by cluster. The Presidency kindly asks delegations to focus their interventions at the WP on their main remaining concerns and provide the detailed technical points in their written comments.

As this will be the final Working Party under the Belgian Presidency, delegations are invited to indicate whether they could support or not the overall text they have received.

Moreover, delegations are also invited to inform the Presidency and the Commission's colleagues in advance of any points they wish to raise at the meeting.

Following the Working Party, delegations will be invited to submit their written comments on the whole text for 5 June (cob).

Cluster 1 – Product requirements

1) Definitions

a. Detergent

Following several comments from various delegations, the wording 'or added to support cleaning processes' has been reinstated. Without this wording, water softeners/anti-limescale agents and 'scent boosters', for instance, that are added during the laundry would not be covered by the regulation. The Presidency had deleted the wording to address concerns from some delegations that sodium bicarbonate used as baking powder would fall under the scope and therefore be restricted. The Presidency believes that products such as sodium bicarbonate, also used as baking powder, would only fall under the scope of the detergent definition if the presentation of the final product contains claims related to cleaning or supporting cleaning processes.

To illustrate the Presidency's understanding:

- This kind of product would fall under the scope of the regulation:

- Whereas these two products, for instance, would not fall under the scope of the regulation:

b. Placing on the market

Please be advised that the sentence 'Import into the Union customs territory shall be deemed to be placing on the market' has been removed in order to align with the New Legislative Framework definition.

2) Biodegradability

The term « ultimate » has been removed, with the exception of the biodegradability of surfactants.

New criteria and deadlines have been added:

- The first deadline concerns a delegated act that will be adopted by the Commission on polymers used to encapsulate detergents, with a period of 3 years;
- The second deadline concerns another delegated act on other organic ingredients contained in detergents, with a period of 5 years.

3) Micro-organisms

In response to questions related to the warning for detergents in spray format containing micro-organisms referred to in Annex II, point 7 (b), the Presidency believes that the current wording: "in addition to the requirements laid down in Annex V, their label contains a warning that the product may cause respiratory sensitization" allows for flexibility. As the warning is not defined, it can also be covered by the CLP warning for such hazard, e.i. may cause allergy or asthma symptoms or breathing difficulties if inhaled (H334).

4) Review clause on most harmful substances and biocidal active substances

A recital and a review clause have been added to the text. The review clause requests that the Commission assess the necessity to include or adapt provisions in this regulation, taking into account the achievements under other regulation. This is to ensure the fulfilment of the goals set in the European Green Deal concerning the generic approach to risk management for the most harmful substances in consumer products and to avoid circumvention of the approval scheme in the Regulation (EU) No 528/2012.

Cluster 2 – NLF and market surveillance

1) Obligations of economic operators

In this section, some adjustments have been made based on some comments received:

- Articles 7 (manufacturers), 8 (authorised representatives) and 9 (importers) have been adapted for greater coherence between their obligations.
- Article 8(1) has been amended to clarify that the authorised representative is appointed when the manufacturer is not established in the EU and when the detergent or surfactant is not placed on the market by an importer. The appointment of an authorised representative is limited to this situation in order to avoid the dilution of responsibilities between different operators.
- In Article 10 (distributors) the point 2(c) has been removed because it refers to obligations of manufacturers and importers that fall outside the scope of distributors' responsibilities. Please note that point 2(a) still refers to Articles 15, 16 and 17, which include notably provisions on refill sales and digital labelling.

2) Industrial and institutional detergents

The new recital (23a) and Article 13a which required economic operators to ensure that such products are not sold to consumers, have been removed due to the difficulties for economic operators to implement such provisions and for market surveillance authorities to control them. However, the

labelling statement indicating that the product is only for professional use and may not to be sold to consumers, is maintained in Article 15, 3(e).

3) Refill sales

In recital 7, a sentence has been added to clarify why surfactants should also be covered by the provisions on refill sales.

4) Time period for the technical documentation

The period for keeping the information available has been reinstated to 10 years, as initially proposed by the Commission. This is due to the fact that products can remain in the distribution chain for an extended period, outside the control of manufacturers and importers. To ensure consistency and align with the requests of certain delegations, the Presidency suggests to harmonise this regulation with the CLP and REACH Regulations.
This proposal also applies to the digital product passport, the digital label and the traceability of the information.

5) Transmission of the ingredients data sheet to poison centres/appointed bodies

Following discussions and written comments, the Presidency has determined that six delegations expressed a preference for option A (on request) and twelve delegations expressed preference for option B (before placing on the market). The compromise that was submitted to the delegations is structured as follows:

- Poison centres (or, more precisely, appointed bodies under CLP) will have access to the DPP via the web-portal, with the possibility to grant them access to more detailed information than the one visible to end-users;
- DPP will include also ranges of concentration for the substances already listed
- Appointed bodies may request the ingredients data sheet if more details are needed.

Cluster 3 – Labelling and digital labelling

1) General labelling requirements

Please be aware that Article 15, 3 (a) has been amended to align with the New Legislative Framework and the terms ‘type number’ and ‘or other elements allowing their identification’ have been reinstated.

2) “Intentionally added”

Following comments from certain Member States, the meaning of the word ‘added’ has been clarified in Recital 6, and the word ‘intentionally’ has been removed.

3) Labelling of carry-over preservatives

Annex V, Part A, point 3: Preservatives. As a compromise, it is proposed to revert back to previous proposal for the labelling of carry-over preservatives, where the threshold is the CLP elicitation threshold, taking into account specific concentration limits. This proposal would result for example in a labelling threshold of 1,5 mg/kg for methylisothiazolinone.

4) Fragrance allergens

Annex V, Part A, point 4: Fragrance allergens. Please be advised that the numbers of fragrance allergens referring to Annexes II and III of the Cosmetics Regulation have been replaced by a table in Appendix with their complete identification. These allergens have been characterised by the Scientific Committee on Consumer Safety (detailed opinion available at https://health.ec.europa.eu/document/download/392a791e-d831-4bb0-a449-7031bffcd6a4_en?filename=sccs_o_102.pdf). The 0,01% limit is considered safe for products that are

rinsed off. A dynamic link to Annexes II and III of the Cosmetics regulation would not be adequate, as these Annexes also cover substances with other types of risks.

5) Time period for the digital label

The Presidency suggest that the digital label remains available for a period of 10 years (see explanation in cluster 2 point 5).

Cluster 4 – Digital Product Passport

1) Definition of model

The definition has been completed by a requirement to have the same CLP classification. This is to ensure that a model covers products with the same classification, regardless of any changes in the composition within the ranges foreseen in the ingredients data sheet. The incorrect reference to Annex V for the ingredients data sheet has been corrected and replaced by Annex IV.

2) Time period for the digital product passport

The Presidency suggest that the digital product passport remains available for a period of 10 years (see explanation in cluster 2 point 5).

3) Transitional provision and entry into force and application

Please be aware that the Articles 34 and 35 have been adapted and now account for the latest of the implementing acts determining technical requirements for the digital product passport. Products compliant with Regulation No 648/2004 that were placed on the market one day before 30 months from the date of entry into force, may still be available on the market until 42 months from the date of entry into force. This longer transition period is to allow for any outstanding issues to be resolved.