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NOTE

From:	Presidency
To:	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

PRESIDENCY STEERING NOTE

DETERGENTS AND SURFACTANTS REGULATION

WORKING PARTY ON TECHNICAL HARMONISATION

(DANGEROUS SUBSTANCES – CHEMICALS)

11 JULY 2024, THURSDAY

KEY AMENDMENTS IN FOCUS

The European Parliament adopted its position on the 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 on 27 February 2024. The legislative resolution can be found in document [P9_TA\(2024\)0091](#) of the European Parliament.

For the Working Party on 11 July 2024, the Hungarian Presidency has analysed the Parliament's amendments and aims to present a selection of the major differences of the Parliament's position compared to the Council Mandate (11205/24). These differences are organised into thematic groups to support the preparation for the trilogues. All amendments will be comparable when the 4 column document is ready. The European Parliament's text has 150 amendments. In order to help navigation within the document¹, numbers of the amendments are indicated in brackets (e.g. [am 123]), where applicable.

The main differences between the co-legislators positions concern topics such as: phosphorus and phosphate content, providing the ingredient data sheet to appointed bodies, biodegradability, microorganisms, obligations of manufacturers, labelling, digital product passport, animal testing, and penalties.

RESTRICTIONS ON THE CONTENT OF PHOSPHATES AND OTHER PHOSPHOROUS COMPOUNDS

(Annex III, Article 6.1 b, Recital 10)

The EP proposes stricter limits on phosphates and phosphorus. While the Council mandate establishes harmonised limits on the content of phosphates and phosphorus compounds in consumer laundry and consumer automatic dishwasher detergents only, the Parliament requires limits for these in the case of certain consumer and industrial detergents (Recital 10 [am 2]).

¹ https://www.europarl.europa.eu/doceo/document/TA-9-2024-0091_EN.html

The EP introduces new restrictions on the content of phosphates and other phosphorus compounds in certain detergent categories (e.g., after a transitional period, consumer hand dishwashing detergents may not contain phosphates and other phosphorus compounds /Annex III, table [am 132]).

According to the EP's mandate, the presence of traces of phosphates and other phosphorous compounds in surfactants and detergents, resulting from impurities in ingredients from the manufacturing process, or from leaching from storage or packaging, shall be accepted if such presence is technically unavoidable according to good manufacturing practice and if, despite their presence, these surfactants and detergents are safe (Art. 6.1b, [am 53]). There are no similar requirements in the Council mandate.

INGREDIENT DATA SHEET

(Art 7.6.2.a)

The Parliament requires to submit the ingredient data sheet when placing the detergent on the market, while the Council mandate manufacturers should provide it upon request from the appointed bodies of Member States (Art 7.6.2.a, [am 57-58]).

BIODEGRABILITY

(Article 4.2a, 4.2b, 32a, 26.6, 26.6.b, 26.6.c, Recital 9a, 61a)

The EP introduces new provisions stating that substances used in detergents and cleaning products, except surfactants, must be inherently biodegradable (Rec. (9a), [am 1]), Art. 4.2a, [am 50]. Additionally, the European Parliament mandates that organic ingredients other than surfactants must also be inherently biodegradable, with the option to change the biodegradability criteria. On the other hand, the Council's text does not require inherent biodegradability, but it allows for a change in the biodegradability criteria specifically for surfactants. The European Parliament's text specifies that organic ingredients, other than surfactants, in detergents must be inherently biodegradable and only mentions delegated acts in this regard. However, the Council's text permits a general change in the biodegradability requirements.

The Council also gives the possibility to modify the appropriate test methods for surfactants, whereas the EP's text only mentions inherent biodegradability for ingredients other than surfactants. (Art. 4.2a, [am 50]).

According to the EP the Commission shall adopt delegated acts within two years of the entry into force of this Regulation to supplement Annex I with biodegradability criteria and test methods for non-surfactants. (Art. 4.2a, [am 50]). When adopting those delegated acts, the Commission shall take into account manufacturing practices, the

availability of technically and economically feasible alternatives, the impact on small and medium-sized enterprises and the impact on health and the environment. (Art. 4.2a, [am 50]). In the Council mandate (Art 26.6), the delegated acts which the Commission shall adopt concern not only Annex I but also Art 4. The EP does not mention this relation with Art 4 (Art 4,2a, [am 50]).

The Council allows the possibility of changing the biodegradability requirements and corresponding test methods for other detergent ingredients, including polymers used in encapsulated detergents (Art 26.6.b), while the EP doesn't allow that.

The Council permits the use of substances not meeting the biodegradability criteria of Annex I in detergents in a limited way (Art 26.6c). The EP text does not mention this exception. Within two years from the entry into force of the delegated act, the water-soluble film around detergents shall be degradable (Art. 4.2b, [am 51]).

In order to support the transition to a circular economy, the Parliament is considering the introduction of mandatory targets for renewable raw materials and recycled content in detergents which should be assessed by the Commission. (Rec. (61a), [am 29], Art. 32a, [am 123]).

MICROORGANISMS

(Annex II.6, II.7, 26.6b, 32.1a, Recital 61)

EP has stricter restrictions on detergents containing micro-organisms than the Council. Both texts require that the Commission should assess the safety requirements for detergents containing micro-organisms and the possibility to allow the use of new micro-organisms in detergents (Rec. (61) [am 61]), but the EP adds that the Commission should also restrict the presence of micro-organisms, where necessary.

The EP sets up in the new 26.6b section that the Commission is empowered to adopt delegated acts in accordance with Article 27 to amend Annex II by updating the standards applicable for the enumeration of micro-organisms to take into account scientific and technical progress (Art 26.6b, [am 116]).

The EP demands in the new 32.1a section, that by 3 years from the date of application of this Regulation and every 3 years thereafter, the Commission shall review the list of pathogenic micro-organisms provided for in Annex II.2 and, where necessary, adopt delegated acts in accordance with Article 27 to amend Annex II in order to take into account scientific and technical progress (Art 32.1a, [am 122]). The Council mandate doesn't require this.

The Parliament extends the minimum shelf life of a detergent that contains micro-organisms to be at least 24 months. The microbial count should not decrease by more than 10% every 12 months (Annex II.6, [am 129]). While in the Council's mandate, the minimum shelf life should not be less than 18 months and it adds a standard plate count equal to or greater than 1×10^4 colony-forming units (CFUs) per ml.

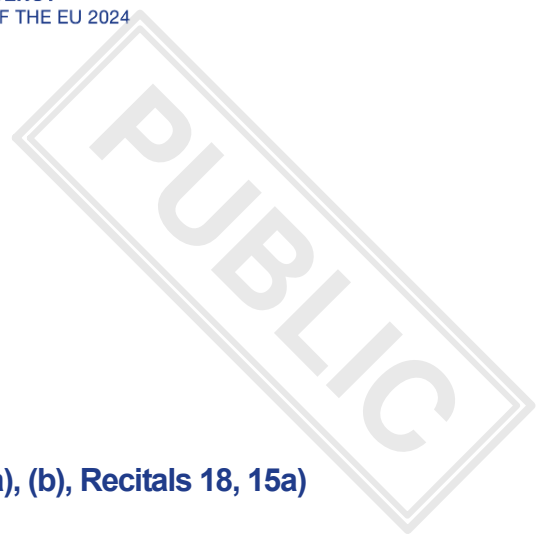
In contrast of the Council, the EP excludes animal testing methods when it comes to testing the detergents containing micro-organisms in a spray format, before placing them on the market (see Animal testing point, Annex II.7., [am 115 and 130]). The Council text proposes the risk assessment as the basis for allowing products on the market and suggests a future risk assessment methodology to be created for microorganisms used in detergent products. This is done through a delegated act within 30 months after entry into force of the Regulation.

ANIMAL TESTING

(Annex II.7, Article 6a, Art.15.5a, Art. 26.6a, Recitals 12a, 12b)

The consideration of animal's rights is a new point of view in Parliament's text, compared to the Council's mandate:

- The safety of detergents and cleaning products and their compliance with the Regulation shall be established by non-animal testing methods validated and accepted at EU level. (Rec. (12a), [am 3]). Thus, the placing on the market of products tested on animals will generally be prohibited, while ensuring the protection of human health and allowing the use of historical data (Art. 6a, [am 54]).
- The use of the claim "free from animal testing" or similar claims shall only be allowed if no animal testing has been carried out during manufacture or during the conformity assessment (Art. 12.b, 15.5a, [am 4, 85]).
- Where Commission Regulation (EC) 440/2008 (concerning the test methods pursuant to REACH) provides for non-animal approaches for testing the respiratory sensitization properties of micro-organisms, the Commission shall, without undue delay, adopt delegated acts in accordance with Art 27 to amend Annex II to this Regulation by determining the requirements for placing on the market detergents containing micro-organisms in a spray format (Art 26.6a, [am 115]).
- Detergents containing micro-organisms shall be allowed to be placed on the market in a spray format after appropriate non-animal approaches to testing the respiratory sensitisation properties (Annex II.7., [am 130]).



OBLIGATIONS OF MANUFACTURERS

(Article 7.7a, 7.8a, 9.10a, 7.3, 7.6.2.(a), (b), Recitals 18, 15a)

The obligations was amended as follows:

- The Parliament's new paragraph states that manufacturers shall, upon request, share relevant information with the relevant economic operators in the supply chain concerned on any conformity issue, health, environmental risk. (Art. 7.7a, [am 60]).
- EP mandates that the manufacturers must provide their communication channels, such as telephone number, e-mail address (Rec. (18), [am 8], or a dedicated part of their website shall be publicly available on their website, taking into account the accessibility needs of persons with disabilities, and shall allow end-users to submit complaints or concerns about possible product non-conformities or safety problems. (Art. 7.8a, [am 62], Art. 9.10a, [am 75]). The Council mandate does not require any special provisions considering the needs of persons with disabilities.

AUTHORISED REPRESENTATIVE

(Article 8.2a, Art 8.3.(ca), Art 8.3.2e, Recital 17)

- Both texts allows the manufacturers to nominate an authorised representative to carry out specific tasks on their behalf, as a help to the manufacturer to comply with this Regulation. The EP's position does not restrict the nomination of authorised representatives to the manufacturers that are not established in the EU, but states that the mandate shall only be valid if it's accepted in writing by the authorised representative. (Art 8.1., [am 63]. In the EP position, the new Art8.2a requires the manufacturers outside the EU that they shall inform the national competent authorities of the postal and e-mail address of their authorised representative (Art 8.2a new, [amendment 64]).
- The Council mandate includes the possibility for appointment of authorised representatives to manufacturers outside the EU without an importer as a mandatory condition. The obligations of authorised representatives are expanded in order to allow for them to verify that manufacturers fulfil their obligations. The EP sets a 20 working day deadline to inform the market surveillance authorities of the termination of the contract with the manufacturer if this is not the case. (Art 8.3.2e, [amendment 67]. The EP requires that the authirised represenatatives should have

the appropriate means to perform their tasks and to provide the information requested by authorities in a language easily understood by the authority. (art 8. 3.1, Art 3.2.2c, [amendment 65-66])

According to both texts, the authorised representative shall inform the manufacturer where they consider that a detergent or surfactant presents a risk to health or to the environment. (Art 8.3.(aa), Art 8.3.2e, [amendment 68]) The Council mandate is stricter and deviates from the NLF approach when adds verification of non compliance prima facie to the authorised representative.

LABELLING

(Article 15.2, 16.2, 17.1.(e), 17.2, 17.3,, Recital 31a)

- The labelling requirements was amended in the Parliament’s text as follows: When detergents are made available on the market directly to an end user in a refill format, the economic operator must provide the physical label and the data carrier through which the digital label is accessible to the end-user (Art. 15.2, [am 81]) and the economic operator must ensure that they are affixed to the packaging (Art. 16.2, [am 88],). The Council mandate emphasizes only the necessity of ensuring that the physical label is on every refilled package.
- Both texts highlight that the format of the digital label shall also address the needs of vulnerable groups. Moreover, the EP underscore the needs of persons with disabilities (Art 17.1.(e), [am 90]). In the new Rec. (31a) section, the EP demands that the digital labelling could increase legibility, ease of use and comprehension for consumers, including vulnerable and visually impaired consumers (Rec. (31a), [am 16]), which the Council mandate doesn’t mention.
- The criteria for the digital label was amended by the EP: The data carrier must be not only physically, indelibly and visibly, but also legibly affixed to the detergent or surfactant, their packaging or associated documentations in a way that allows it to be automatically processed by digital devices (Art. 17.2, [am 92]).
- Regarding the availability of more comprehensive information on the digital label, the Parliament’s text mentions ‘scan’ while the Council’s mandate is a broad approach with requiring online availability of such data (Art. 17.3, [am 93]).

DIGITAL PRODUCT PASSPORT

(Article 2.(34a), 2.1.28, 7.3, 8.3.b, 18.2.(a), 18.2.(f), 18.9.1, 19.1.b, 19.1.d, 19.1.(ba), Recital 15a, 19, 39a, 44)

The digital product passport was also amended by the EP: it must correspond to a specific model and must be updated if the list of ingredients or a specific batch of

detergent or surfactant is changed (Rec. (39a), [am 23], Art. 2.(34a), [am 43]), Art. 18.2.(a), [am 97]).

When it comes to keeping the technical documentation, the digital product passport, and, when applicable, the digital label, both the European Parliament and the Council require a period of 10 years. However, there is a difference in when the 10-year period starts for keeping the digital product passport (DPP). The Parliament stipulates that the DPP should be kept from the date on which the last item of a detergent or surfactant batch or model covered by the documentation, product passport, or digital label was placed on the market (Rec 15a, [am 6]), while the Council mandate defines the beginning of this keeping period as when the detergent or surfactant has been placed on the market (Art. 8.3.b).

The digital product passport should be easily accessible to a wide range of stakeholders, including customers, end-users, manufacturers, importers, distributors, national authorities, market surveillance authorities, customs authorities, the Commission, and other relevant parties such as civil society organizations and researchers (Art. 18.2.(f), [am 99]). This amendment specifies the specific actors who should have access to the DPP, whereas the Council mandate only mentioned consumers, end-users, market surveillance authorities, customs authorities, the Commission, and other economic operators.

At every occurrence of the product passport in the text, the Council specifically mentions digital product passport, while the Parliament refers only to product passport (Rec. (19), (39a), (44), Art 2.1.28, 7.3, 18.9.1., 19.1.b., 19.1.d., [am 9, 23, 25, 40, 56, 103, 104, 107]).

In the EP's position there is a new amendment which mentions the digital product passports must be designed and operated in a user-friendly manner. (Art. 19.1.(ba), [am 105]).

The Parliament amended Art 18.9.1 the following way; by 12 months from the entry into force of this Regulation, the Commission shall adopt an implementing act determining the specific and technical requirements related to the product passport (Art 18.9.1, [am 103]. The Council mandate doesn't set up a time limit.

PENALTIES

(Article 29.(1a))

The Parliament's text goes into more detail regarding the possible penalties. It specifies that in the case of penalties, due regard shall be paid to the nature, gravity and extent of the infringement; the intentional or negligent nature of the infringement;

the damage caused by the infringement to human health or the environment, where this can be established; the willingness of the natural or legal person held liable to cooperate with the competent authority (Art. 29.(1a), (a), (b), (c), (d), [am 119]).

REPORT AND REVIEW

(Art. 31.1)

When assessing the effectiveness of this regulation and reporting it to the Parliament and the Council, the Parliament's text requires 5 years from the date of application of this Regulation, while the Council mandate requires 7 years (Art 31.1, [am 120]).

TRANSITIONAL PROVISIONS, ENTRY INTO FORCE AND APPLICATION

(Art. 34, Art. 35.)

The EP does not amend this article, while the Council extends the period between the entry into force and application and the time of sale of detergents and cleaning products that comply with the current regulation.

OTHER AMENDMENTS

(Article 1.1.3a, Art 1.1.3b, Art 1.1.3c, Art 1.1.3d)

The Parliament adds new definitions such as 'hard surface cleaning product', 'consumer hand dishwashing detergent', 'industrial and institutional laundry detergent', 'industrial and institutional dishwasher detergent' (Art 1.1.3a, Art 1.1.3b, Art 1.1.3c, Art 1.1.3d, [am 31, 32, 33, 34]). The Council mandate does not contain these.