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Subject:	Opinion of the European Economic and Social Committee 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 [COM(2023) 217 final – 2023/0124 (COD)]
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Encl.: INT/1012 Making available and placing on the market of detergents



OPINION

European Economic and Social Committee

Making available and placing on the market of detergents

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

[COM(2023) 217 final – 2023/0124 (COD)]

INT/1012

Rapporteur: Violeta JELIĆ

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Referral	European Parliament, 01/06/2023 Council, 07/06/2023
Legal basis	Article 114 of the Treaty on the Functioning of the European Union
Section responsible	Single Market, Production and Consumption
Adopted in section	29/06/2023
Adopted at plenary	12/07/2023
Plenary session No	580
Outcome of vote (for/against/abstentions)	193/1/2

1. Conclusions and recommendations

- 1.1 The European Economic and Social Committee (EESC) welcomes the updating and simplification of Regulation (EC) No 648/2004 on detergents, the removal of redundant or obsolete elements and the maintaining of those that work well. The EESC considers however that the opportunities for streamlining are offset or exceeded by an increased administrative burden arising from other aspects of the revision proposal.
- 1.2 The EESC emphasises the importance of ensuring coherence and consistency between the revision of the Detergents Regulation and other legislative and technical developments, such as those connected with the CLP Regulation (1272/2008) and Ecodesign for Sustainable Products.
- 1.3 The EESC is fully committed to ensuring the safety of consumers and professional users, but considers the new requirements on detergents containing micro-organisms to be unduly conservative, inflexible and containing contradictions. The EESC recommends that these rules be adapted to be more consistent, both internally and with other policies, and to support rather than prevent innovation in this emerging product category.
- 1.4 The EESC welcomes the level playing field established for market surveillance of EU-manufactured and imported detergents and surfactants. The EESC however finds the obligation to create and notify a product passport for every batch of a detergent/surfactant to be excessively onerous, and recommends establishing a more appropriate trigger for updating of the product passport.
- 1.5 The EESC requests further clarification on the added value of the product passport and CE marking for market surveillance, as such information was not included in the Commission's impact assessment. The EESC notes that fraudulent CE marking can jeopardise the safety of consumers and users and undermine the level playing field for compliant economic operators.
- 1.6 The EESC stresses the importance of specific and technical requirements being in place in good time to permit implementation, and so recommends that transitional periods commence only after adoption of the relevant additional legislation.
- 1.7 The EESC supports improving the clarity and readability of product labels by removing overlaps between legislations, simplifying label content and making effective use of digital labelling. The EESC recommends that the same possibilities for digitalisation of labelling be applied for pre-packaged products as for refill sales, and that detergents may be labelled more clearly using pictograms/icons in place of text.

2. Background to the opinion

- 2.1 The proposal updates the existing rules on detergents with reference to the objectives of the European Green Deal, the Chemicals Strategy for Sustainability and the recently adopted Commission Communication on the long-term competitiveness of the EU. The proposal aims at simplifying market rules by abolishing requirements that are considered unnecessary or redundant, introducing voluntary digital labelling by making a distinction between pre-packaged

products and products sold in a refill format, facilitating the sales of innovative safe products by introducing safety requirements for micro-organisms, and strengthening enforcement by introducing a product passport.

- 2.2 The general provisions of the proposal include definitions for "detergents", "surfactants" and other concepts referenced in the text of the proposed regulation, some of which have been updated and clarified.
- 2.3 The proposal sets out product requirements for detergents and surfactants, with respect to free movement, biodegradability, the use of micro-organisms in detergents and limitations on the content of phosphates and other phosphorus compounds. The last three of these are further elaborated in the annexes to the proposed regulation.
- 2.4 Annex I contains ultimate biodegradability criteria and test methods for surfactants, as such and contained in detergents. These are in essence unchanged from the provisions in Regulation (EC) No 648/2004, as these criteria and test methods remain fit for purpose and state of the art. The obsolete primary biodegradability criteria have been removed, as has the derogation procedure for surfactants not meeting the ultimate biodegradability criteria: this was used only once, with an entry in the former Annex V which expired in 2019, so is deemed no longer necessary.
- 2.5 Annex II of the proposal introduces requirements for detergents containing microorganisms, with a view to establishing harmonised rules governing the safety of such products and relevant test methods to demonstrate compliance with those rules. The requirements prescribe the (strains of) micro-organisms which may be used, based on their formal identification and also a requirement that they belong both to Risk Group I as defined by Directive 2000/54/EC (biological agents at work) and the Qualified Presumption of Safety (QPS) list from the European Food Safety Authority (EFSA). The Annex also prohibits the use of specific pathogenic organisms or genetically modified micro-organisms, claims of antimicrobial or disinfecting effect unless the detergents complies with the Biocidal Products Regulation No 528/2012, and the placing on the market in refill format of detergents containing micro-organisms. The Annex furthermore establishes mandatory testing requirements for detergents containing micro-organisms, including third-party testing to support any claims made about the action of the micro-organisms and an *in vivo* acute inhalation toxicity test (Test B.2 under Regulation (EC) No 440/2008, i.e. OECD TG 403).
- 2.6 The proposal maintains unchanged the detailed limitations on the content of phosphates and other phosphorus compounds from Regulation (EC) No 648/2004.
- 2.7 The proposal describes the obligations of economic operators, namely manufacturers, importers, distributors and the newly-introduced role of authorised representative. The former obligation for the manufacturer to be established in the Union is removed, but manufacturers outside the Union are required to designate an authorised representative by written mandate to perform certain tasks (whereas this is merely optional for manufacturers established within the Union).
- 2.8 The proposal introduces a new conformity assessment procedure to be carried out by manufacturers of detergents or surfactants, which is based on Module A of Decision

No 768/2008/EC (Internal production control). The procedure involves a self-declaration of conformity and requires that technical documentation be established containing a description of the detergent and its use, reports of tests carried out to demonstrate compliance and an ingredient data sheet.

- 2.9 Requirements are set out on CE marking and labelling of detergents and surfactants, including rules for the implementation of digital labelling where the economic operator chooses to use this. Labelling requirements are described in more detail in Annex V, with specifications for the labelling of contents, dosage information that may be omitted from the physical label when provided in a digital label and a simplified dosage grid for consumer laundry detergents. The proposal also introduces the concept of a data carrier, used to access the digital label, which must be present on the detergent or surfactant, its packaging or accompanying documentation.
- 2.10 The proposal sets out the requirements for, and the content of, a product passport, introduced as a means to facilitate declaration of conformity (via a central registry) and market surveillance for detergents or surfactants placed on the market. The product passport is to be accessed via the same data carrier on the product as mentioned above, and is intended to be interoperable with any product passport introduced, for example, under legislation on Ecodesign for Sustainable Products. The Commission is required to adopt an implementing act prescribing the technical requirements for the product passport and data carrier.
- 2.11 The Commission is empowered to adopt future delegated acts to adapt the requirements described in the preceding chapters in light of technical, scientific and market developments.
- 2.12 The transitional and final provisions include a specific review clause in Article 32 on the requirements relating to detergents containing micro-organisms, requiring the Commission to assess the relevance and effectiveness of these rules no more than three years after entry into force of the regulation.

3. **General and specific comments**

- 3.1 The European Economic and Social Committee (EESC) considers that Regulation (EC) No 648/2004 on detergents (hereinafter referred to as the Detergents Regulation) is relevant in its aims, functions well and has achieved its aims to a large extent.
- 3.2 The EESC agrees with the Commission's aim to update the Detergents Regulation to reflect technological, commercial and policy developments that have occurred since the regulation was adopted in 2004, and supports its objective of simplifying the requirements for economic operators – in particular SMEs – and to remove overlaps and duplication with other pieces of EU legislation. The EESC welcomes the simplifications introduced in the proposal, but finds that the extent of reduction in administrative burden is more modest than that implied by the Commission, and in practice the burden is significantly increased in other areas¹.

¹

For further information on the administrative burden for the detergents industry, refer to the [AISE factsheet on the Cumulative Cost Assessment](#).

- 3.3 The revision of the Detergents Regulation is taking place in parallel with several other proposals for revised or new legislation also affecting detergents, including the CLP Regulation ((EC) 1272/2008) and the new regulation on Ecodesign for Sustainable Products (ESPR). The EESC emphasises the importance of ensuring full coherence and consistency between these different pieces of legislation and avoiding divergences and overlaps in their provisions.
- 3.4 The EESC supports the simplified definition of a "detergent" included in the Commission's proposal, which will be more readily understood and applied by economic operators and public authorities alike. The removal of the reference to specific categories of ingredients (soaps and/or surfactants) in the definition of a detergent renders the definition more inclusive and improves clarity of the scope for future innovation in the product category.
- 3.5 The EESC welcomes the maintenance of the biodegradability requirements for surfactants and the removal of the derogation procedure, which is no longer used. This helps to streamline and improve the clarity of the provisions for economic operators and authorities.
- 3.6 The EESC finds the proposed requirements for detergents containing micro-organisms to be unduly prescriptive and not well suited to detergents. The testing requirements specified in Annex II are considered excessively onerous, particularly for SMEs. For micro-organisms used in spray format detergents there is a requirement to pass a vertebrate animal test for acute inhalation toxicity, which would entail the sacrifice of typically 30 animals per test. This undermines the commitment made in Directive 2010/63/EU on the protection of animals used for scientific purposes, and is not necessary as alternative methods exist for determination of safety (e.g. read-across from historical data, *in vitro* tests with human cell lines or weight of evidence, particularly taking into account the mandatory Risk Group 1/QPS status).
- 3.7 The EESC considers it inappropriate to require that micro-organisms used in detergents must be on the EFSA QPS list. This is not even a mandatory requirement for a micro-organism to be used in the food and feed industry, but rather just a starting point for further evaluation by EFSA. Micro-organisms that are not on the QPS list can still be assessed for safety and used in food or feed, but for detergents no such possibility would exist until a formal review/revision of the requirements was subsequently carried out by the Commission. It is not considered proportionate to have more restrictive rules for detergents than for food, which is ingested directly. On the other hand, if the QPS listing was obligatory then the EESC would find it unjustified to require detergents containing micro-organisms to be labelled with a warning that the product is not to be used on surfaces in contact with food.
- 3.8 Limiting the micro-organisms that may be used in the manner described in the new Annex II risks hampering or blocking innovation, and ignores both the fact that detergents containing micro-organisms are already covered by the Detergents Regulation and other legislation, such as the General Product Safety Directive, and the framework developed by industry to allow for appropriate risk management of microbial ingredients. The proposal exempts detergents placed on the market for research and development purposes from the conditions prescribed in Annex II point 1, but the only mechanism available to allow commercial use of new (strains of) micro-organisms is via the review clause in Article 32 and/or delegated acts. The EESC

recommends adoption of a less restrictive process in order to enable and foster innovation in this growing product segment.

- 3.9 The EESC supports the Commission in maintaining the existing limitations on content of phosphates and other phosphorus compounds, which have proved successful in decreasing the use of phosphorus since 2014 and limiting its use only to applications where it is critical or where a restriction would lead to even greater negative impacts on the environment, safety and/or cleaning performance².
- 3.10 The EESC finds that further clarity is needed on the roles and obligations of economic operators identified in the proposal, in particular the authorised representative as described in Article 8. In the case where it is obligatory for a manufacturer established outside the Union to appoint such an authorised representative, it is not clear whether the mandate given to the latter by the non-EU manufacturer must include, for example, the duty to provide an ingredient data sheet to Member States' appointed bodies, as described in Article 7(6). To ensure a level playing field it is important that the same obligations apply to manufacturers both within and outside the Union and that it is clear how these obligations are to be fulfilled.
- 3.11 The EESC requests further clarification on the added value of the product passport and CE marking as means to demonstrate and/or verify the conformity of products subject to the Detergents Regulation. The impact assessment report from the Commission does not identify any specific problem with compliance or safety risks to consumers as justification for introducing these requirements, and they do not feature in the policy options addressed therefore information on assessment of their impacts is missing. However, the EESC does support the obligation for a product passport being applied equally to all manufacturers of detergents or surfactants, whether established within or outside the Union, to prevent the competitiveness of European products being compromised by imports.
- 3.12 The affixing of a CE mark does not in itself constitute proof that conformity assessment procedures have been carried out in accordance with the regulation, and this must still be verified by surveillance authorities as is the case under the current regulation. Fraudulent CE marking is known to occur in other product categories subject to similar legislation and can expose consumers to health and safety risks.
- 3.13 The EESC calls for any product passport introduced under the Detergents Regulation to be fully integrated with those adopted under other legislation, such as ESPR. To minimise administrative burden for economic operators, particularly SMEs, and public authorities, it is important to maintain coherence and to avoid any duplicative or divergent requirements.

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[Relevance of professional laundry and machine dishwashing on the entry of phosphate and other phosphorus compounds \(P\) into wastewater](#), Umweltbundesamt 98/2021.

- 3.14 The EESC finds the information requirements for the product passport as currently proposed to be inconsistent with a reduction of administrative burden. The creation of a product passport, notification to a registry and printing/affixing of a new data carrier for every specific batch of a product is not workable or proportionate, and the requirement to complete these steps before placing on the market is likely to disrupt and delay supply chains. The EESC recommends that the Commission adapt these requirements to a more workable frequency or variation trigger.
- 3.15 The EESC notes that the specific and technical requirements related to the product passport are to be specified later in an implementing act. These are critical elements for the implementation of the proposed regulation, and the EESC stresses the importance of these requirements being adopted in good time before the regulation comes into effect to avoid legal uncertainty. In order that economic operators will have sufficient time to implement the provisions, the EESC recommends that the start of transitional periods for implementation of the revised Detergents Regulation should commence only following the completion of the Commission's legislative obligations.
- 3.16 The EESC supports the abolition of the ingredient data sheet for detergents meeting the criteria for classification as hazardous under CLP, as this removes an unnecessary duplication with the provisions of the latter regulation. For non-hazardous detergents the EESC suggests that the ingredient data sheet should be provided upon a reasoned request from Member States' appointed bodies, arising from identified consumer protection needs or concerns; this language would be more consistent with Article 8(3)(c) of the proposal and also with CLP Annex VIII.
- 3.17 The EESC welcomes the proposed changes in labelling requirements, albeit relatively limited, to remove duplication between CLP and the Detergents Regulation with respect to identification of ingredients. This will help to improve the clarity and relevance of labels for consumers/end users, who have been shown by independent research to prefer labels with less but clearer information³. In this context the EESC proposes to simplify further the labelling of detergents by use of a system of pictograms or icons in place of text.
- 3.18 The EESC supports the provisions in the proposal to enable digital labelling, which will also help to improve legibility of physical labels whilst offering access to an enhanced experience for the consumer/end user in terms of information, language choice and readability. The EESC also supports access to both digital labels and product passport information through a single data carrier, in order to minimise confusion and clutter on labels.
- 3.19 The EESC welcomes the proposal to allow most of the required labelling to be provided digitally for products sold in a refill format, but questions why the same rules should not also be applied for pre-packaged products as for refill sales. This would better assure a level playing field for detergents placed on the market.

Brussels, 12 July 2023

³

Geuens M, Byrne D, Boeije G, Peeters V, Vandecasteele B. Investigating the effectiveness of simplified labels for safe use communication: the case of household detergents. *Int J Consum Stud*. 2021;45(6):1410–24. <https://doi.org/10.1111/ijcs.12662>.

Oliver RÖPKE

The president of the European Economic and Social Committee
