



Council of the
European Union

Brussels, 11 June 2020
(OR. en)

8750/20

ENV 342
ENT 57
COMPET 273
IND 71
SAN 198
CONSOM 98
MI 168
CHIMIE 21
DELECT 64

COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 9 June 2020

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

No. Cion doc.: C(2020) 3639 final

Subject: COMMISSION DELEGATED REGULATION (EU) .../... of 9.6.2020
amending Annex I to Regulation (EU) 2019/1021 of the European
Parliament and of the Council as regards the entry for perfluorooctane
sulfonic acid and its derivatives (PFOS)

Delegations will find attached document C(2020) 3639 final.

Encl.: C(2020) 3639 final



Brussels, 9.6.2020
C(2020) 3639 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 9.6.2020

amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council as regards the entry for perfluorooctane sulfonic acid and its derivatives (PFOS)

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 1 of Regulation (EU) 2019/1021 establishes as the objective of that Regulation to protect human health and the environment from Persistent Organic Pollutants ('POPs') by prohibiting, phasing out as soon as possible, or restricting the manufacturing, placing on the market and use of substances subject to the Stockholm Convention on POPs.

Perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOSF) are listed in Annex B to the Convention with acceptable purposes and specific exemptions. The POP Review Committee (POPRC) recommended¹ deleting all acceptable purposes except the one for use as insect baits containing sulfluramid. POPRC also recommended changing from acceptable purpose to specific exemption for the uses in hard chromium plating and in fire-fighting foams.

At the ninth Conference of the Parties to the Stockholm Convention, which took place in Geneva, Switzerland, from 29 April to 10 May 2019, the decision (SC-9/4) was taken to amend the acceptable purposes and specific exemptions for PFOS, its salts and PFOSF, listed in Annex B to the Convention, following the recommendation of POPRC. The only amendment relevant for the current EU legislation is a change from an acceptable purpose to a specific exemption for the use of PFOS, its salts and PFOSF as mist-suppressant for non-decorative hard-chromium plating in closed loop system. This change requires adding a time limit for the exemption in Annex I to Regulation (EU) 2019/1021.

In accordance with the second subparagraph of Article 15(1) of Regulation (EU) 2019/1021, a separate delegated act amending Annex I to Regulation (EU) 2019/1021 should be adopted to introduce this change in the entry on PFOS.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The draft amendment was consulted with an expert group (the 'POP CA meeting') on 26 November 2019 and comments were taken into account as far as possible. The group is composed of all the relevant stakeholders - representatives of Member States, of the European Chemicals Agency, the chemicals industry and the civil society.

A public consultation was carried out for the draft act from 29 November to 27 December 2019. One comment was received, asking to apply the same provisions for articles as in entry 68 of Annex XVII of Regulation EU 1907/2006 (REACH), concerning PFOA, its salts and PFOA-related compounds. This request is not justified because it concerns regulatory provisions for a different substance. Moreover, the change in the entry for PFOS concerns an industrial use and not a use in articles.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act amends the list of chemicals in Annex I on the basis of developments under the Convention. The legal basis for the proposed delegated act is Article 15(1) of Regulation (EU) 2019/1021.

¹ Decision POPRC-14/3

COMMISSION DELEGATED REGULATION (EU) .../...

of 9.6.2020

amending Annex I to Regulation (EU) 2019/1021 of the European Parliament and of the Council as regards the entry for perfluorooctane sulfonic acid and its derivatives (PFOS)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants², and in particular Article 15 (1) thereof,

Whereas:

- (1) Regulation (EU) 2019/1021 implements the commitments of the Union under the Stockholm Convention on Persistent Organic Pollutants³ ('the Convention') and under the Protocol on Persistent Organic Pollutants to the 1979 Convention on Long-Range Transboundary Air Pollution⁴ ('the Protocol').
- (2) Annex B to the Convention ('Restriction') contains a list of chemicals for which each Party to the Convention is required to restrict their production, use, import and export in light of any applicable acceptable purpose and/or specific exemption listed in that Annex.
- (3) The Conference of the Parties to the Convention has, pursuant to Article 8(9) of the Convention, decided in its ninth meeting to amend Annex B to the Convention in relation to the acceptable purposes and specific exemptions for perfluorooctane sulfonic acid (PFOS), its salts and perfluorooctane sulfonyl fluoride (PFOSF). The Conference of the Parties decided to amend the acceptable purpose for the use of PFOS, its salts and PFOSF for metal plating (hard metal plating) only in closed-loop systems to a specific exemption.
- (4) The amendment of the acceptable purpose for the use of PFOS, its salts and PFOSF for metal plating (hard metal plating) only in closed-loop systems to a specific exemption has the effect that Parties are allowed to use that exemption for a maximum period of five years after the entry into force of that amendment. The exemption may be extended for additional five years following a decision by the Conference of the Parties upon request by a Party and based on a justification of the continuing need for that use. Consequently, the entry in Part A of Annex I to Regulation (EU) 2019/1021 for perfluorooctane sulfonic acid and its derivatives (PFOS) should be amended to reflect the obligations under the Convention.
- (5) Regulation (EU) 2019/1021 should therefore be amended accordingly,

² OJ L 169/45, 25.6.2019, p. 45.

³ OJ L 209, 31.7.2006, p. 3.

⁴ OJ L 81, 19.3.2004, p. 37.

HAS ADOPTED THIS REGULATION:

Article 1

Annex I to Regulation (EU) 2019/1021 is amended in accordance with the Annex to this Regulation.

Article 2

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 be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 9.6.2020

For the Commission
The President
Ursula VON DER LEYEN