



2021/0340(COD)

9.2.2022

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council amending Annexes IV and V to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (COM(2021)0656 – C9-0396/2021 – 2021/0340(COD))

Committee on the Environment, Public Health and Food Safety

Rapporteur: Martin Hojsik

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council amending Annexes IV and V to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants (COM(2021)0656 – C9-0396/2021 – 2021/0340(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2021)0656),
 - having regard to Article 294(2) and Article 192(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0396/2021),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of 8 December 2021¹,
 - after consulting the Committee of the Regions,
 - having regard to Rule 59 of its Rules of Procedure,
 - having regard to the report of the Committee on the Environment, Public Health and Food Safety (A9-0000/2022),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ [OJ C 0, 0.0.0000, p. 0. / Not yet published in the Official Journal.]

Amendment 1

Proposal for a regulation Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) At its 13th, 14th and 15th meetings, the Persistent Organic Pollutants Review Committee (POPRC), pursuant to Article 8(6) and (7), point (a), of the Convention, completed the risk profile and risk management evaluation for perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds. The Committee, in accordance with Article 8(9) of the Convention, adopted Decision POPRC-15/1 recommending that the Conference of the Parties consider listing PFHxS, its salts and PFHxS in Annex A to the Convention without specific exemptions. Perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds are envisaged to be listed in the Convention in the second segment of Basel COP-15 which, due to the postponement of the July 2021 meeting as a consequence of COVID-19, is tentatively scheduled for June 2022. It is therefore appropriate, based on the current impact assessment and with respect to the objectives of the Convention, to already establish threshold limits for those substances.

Or. en

Amendment 2

Proposal for a regulation Recital 6

Text proposed by the Commission

Amendment

(6) The proposed concentration limits in Annexes IV and V to Regulation (EU) 2019/1021 have been set applying the same methodology that was used to establish the

(6) The proposed concentration limits in Annexes IV and V to Regulation (EU) 2019/1021 have been set applying the same methodology that was used to establish the

concentration limits in previous amendments of Annexes IV and V to Regulation (EC) No 850/2004. The proposed concentration limits should achieve the objective of a high level of protection of human health and the environment associated to the destruction or irreversible transformation of the substances concerned. Those limits should also take into consideration the broader policy objective of achieving a climate-neutral and circular economy, enshrined in the European Green Deal²⁶.

²⁶ COM(2019) 640 final

concentration limits in previous amendments of Annexes IV and V to Regulation (EC) No 850/2004. The proposed concentration limits should ***first and foremost*** achieve the objective of a high level of protection of human health and the environment associated to the destruction or irreversible transformation of the substances concerned, ***as enshrined in the Convention***. Those limits should also take into consideration the broader policy objective of achieving a climate-neutral and circular economy ***based on clean non-toxic material cycles and the zero pollution ambition***, enshrined in the European Green Deal²⁶.

²⁶ COM(2019) 640 final

Or. en

Amendment 3

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) The concentration limits in Annexes IV and V to Regulation (EU) 2019/1021 should be coherent and contribute to the implementation of the communication of the Commission of 14 October 2020 entitled ‘Chemicals Strategy for Sustainability - Towards a Toxic-Free Environment’ that envisages addressing per- and polyfluoroalkyl substances (PFAS) using a group approach and on a global scale through the relevant international fora and in bilateral policy dialogues with third countries.

Or. en

Amendment 4

Proposal for a regulation Recital 6 b (new)

(6b) To ensure better traceability and effective treatment of all persistent organic pollutant waste, there is a need to avoid any inconsistency between the waste containing persistent organic pollutants incorporated in Regulation (EC) No 850/2004, now repealed by Regulation (EU) 2019/1021, and those incorporated thereafter. This should be done, inter alia, by review of the third indent of paragraph 2 entitled ‘Classification of waste as hazardous’ of the Annex to Commission Decision 2014/955/EU^{1a}, which should recognise that all persistent organic pollutants exceeding the concentration limits indicated in Annex IV to Regulation (EU) 2019/1021 are to be classified as hazardous.

^{1a} Commission Decision 2014/955/EU of 18 December 2014 amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/EC of the European Parliament and of the Council (OJ L 370, 30.12.2014, p. 44).

Or. en

Amendment 5

Proposal for a regulation

Annex I – paragraph 1 – point 1 – point a – table

Regulation (EU) 2019/1021

Annex IV – table

<i>Text proposed by the Commission</i>			
‘Pentachlorophenol, its salts and esters	87-86-5 and others	201-778-6 and others	100 mg/kg
Dicofol	115-32-2	204-082-0	50 mg/kg
Perfluorooctanoic acid (PFOA), its salts and PFOA-related	335-67-1 and others	206-397-9 and others	1 mg/kg

compounds			
			(<i>PFOA</i> and its salts),
			40 mg/kg
			(<i>PFOA</i> -related compounds)'
<i>Amendment</i>			
'Pentachlorophenol, its salts and esters	87-86-5 and others	201-778-6 and others	100 mg/kg
Dicofol	115-32-2	204-082-0	50 mg/kg
Perfluorooctanoic acid (<i>PFOA</i>), its salts and <i>PFOA</i> -related compounds	335-67-1 and others	206-397-9 and others	0,1 mg/kg
			(<i>PFOA</i> and its salts),
			20 mg/kg
			(<i>PFOA</i> -related compounds)'
<i>Perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds</i>	<i>355-46-4 and others</i>		0,1 mg/kg
			(<i>PFHxS</i> and its salts),
			20 mg/kg
			(<i>PFHxS</i> -related compounds)'

Or. en

Justification

The PFHxS, its salts and PFHxS-related compounds are envisaged to be listed in the Convention in the second segment of Basel COP-15, postponed from 2021 to 2022 due to covid. It is therefore appropriate with respect to the objectives of the Convention and to facilitate preparation of the EU for the meeting of the Parties, to already establish threshold limits for those substances. Proposed values are within the limits of economic and technical

feasibility, based on the Impact Assessment.

Amendment 6

Proposal for a regulation

Annex I – paragraph 1 – point 1 – point b – table

Regulation (EU) 2019/1021

Annex IV – table

<i>Text proposed by the Commission</i>			
‘Alkanes C10-C13, chloro (short-chain chlorinated paraffins) (SCCPs)	85535-84-8	287-476-5	1 500 mg/kg
<i>Amendment</i>			
‘Alkanes C10-C13, chloro (short-chain chlorinated paraffins) (SCCPs)	85535-84-8	287-476-5	420 mg/kg

Or. en

Justification

Adopting the lower limit of 420 mg/kg from the Impact Assessment would imply comparably low changes in costs for waste management compared to the current situation. Furthermore, it would also not result in any disposal and recovery capacity bottlenecks in the EU. Lower limit is therefore viable and beneficial to address the issue that have been detected via market surveillance activities when SCCPs is being found in some consumer products introduced into the EU market.

Amendment 7

Proposal for a regulation

Annex I – paragraph 1 – point 1 – point c – table

Regulation (EU) 2019/1021

Annex IV – table

<i>Text proposed by the Commission</i>			
Tetrabromodiphenyl ether C12H6Br4O	40088-47-9 and others	254-787-2 and others	Sum of the concentrations of tetrabromodiphenyl ether, pentabromodiphenyl ether,
Pentabromodiphenyl ether C12H5Br5O	32534-81-9 and others	251-084-2 and others	

Hexabromodiphenyl ether C ₁₂ H ₄ Br ₆ O	36483-60-0 and others	253-058-6 and others	hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether:
Heptabromodiphenyl ether C ₁₂ H ₃ Br ₇ O	68928-80-3 and others	273-031-2 and others	
Bis(pentabromophenyl) ether (decabromodiphenyl ether; decaBDE) C ₁₂ Br ₁₀ O	1163-19-5 and others	214-604-9 and others	
			(a) until [OP, please introduce the date of the day before the date in the following point], 500 mg/kg
			(b) from [OP, please introduce the date of 5 years after the date of entry into force of this Regulation], 200 mg/kg or, if higher, the sum of the concentration of those substances where they are present in mixtures or articles, as set out in Annex I, fourth column, point 2 for the substances tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and

			decabromodiphenyl ether.’
<i>Amendment</i>			
Tetrabromodiphenyl ether C ₁₂ H ₆ Br ₄ O	40088-47-9 and others	254-787-2 and others	Sum of the concentrations of tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether:
Pentabromodiphenyl ether C ₁₂ H ₅ Br ₅ O	32534-81-9 and others	251-084-2 and others	
Hexabromodiphenyl ether C ₁₂ H ₄ Br ₆ O	36483-60-0 and others	253-058-6 and others	
Heptabromodiphenyl ether C ₁₂ H ₃ Br ₇ O	68928-80-3 and others	273-031-2 and others	
Bis(pentabromophenyl) ether (decabromodiphenyl ether; decaBDE) C ₁₂ Br ₁₀ O	1163-19-5 and others	214-604-9 and others	
			(a) until [OP, please introduce the date of the day before the date in the following point], 200 mg/kg
			(b) from [OP, please introduce the date of 5 years after the date of entry into force of this Regulation], 100 mg/kg or, if higher, the sum of the concentration of those substances where they are present in mixtures or articles, as set out

			in Annex I, fourth column, point 2 for the substances tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether.’
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Or. en

Justification

The limit of 200 mg/kg is already technologically achievable. The rapporteur is proposing to adapt the concentration limit values in order to increase the compatibility of the legislation with the European Green Deal and subsequent strategies, based on the different scenarios outlined in the Impact Assessment and innovative waste management options. Lowering the limit in future will allow further development of analytical methods and waste management technologies.

Amendment 8

Proposal for a regulation

Annex I – paragraph 1 – point 1 – point d – table

Regulation (EU) 2019/1021

Annex IV – table

<i>Text proposed by the Commission</i>			
‘Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF) and dioxin-like polychlorinated biphenyls (dl-PCBs)			5 µg/kg ⁽²⁾
<p>(2) The limit is calculated as the sum of PCDD, PCDF and dl-PCBs according to the toxic equivalency factors (TEFs) set out in Part 2, in the third subparagraph, in the table, of Annex</p>			

V.’			
<i>Amendment</i>			
‘Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF) and dioxin-like polychlorinated biphenyls (dl-PCBs)			3 µg/kg ⁽²⁾
<hr/> <p>(2) The limit is calculated as the sum of PCDD, PCDF and dl-PCBs according to the toxic equivalency factors (TEFs) set out in Part 2, in the third subparagraph, in the table, of Annex V.’</p>			

Or. en

Justification

The limit of 3 µg/kg aims at limiting the export of fly ash with dioxin levels over one thousand ng TEQ kg-1 from developed countries to countries with economies in transition or developing countries. The proposed value is nevertheless above the lowest scenario assessed by the Commission, considering possible impact on households and municipalities.

Amendment 9

Proposal for a regulation

Annex I – paragraph 1 – point 1 – point e – table

Regulation (EU) 2019/1021

Annex IV – table

<i>Text proposed by the Commission</i>			
‘Hexabromocyclohexane ⁽⁴⁾	25637-99-4, 3194-55-6, 134237-50-6, 134237-51-7, 134237-52-8	247-148-4 221-695-9	500 mg/kg
<i>Amendment</i>			
‘Hexabromocyclohexane ⁽⁴⁾	25637-99-4, 3194-55-6, 134237-50-6, 134237-51-7, 134237-52-8	247-148-4 221-695-9	<i>(a) until [OP, please introduce the date of the day before the date in the following point], 200 mg/kg</i>

			<i>(b) from [OP, please introducethe date of 5 years after the date of entry into force of this Regulation], 100 mg/kg</i>
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Or. en

Justification

The limit of 200 mg/kg is already technologically achievable. The rapporteur is proposing to adapt the concentration limit values in order to increase the compatibility of the legislation with the European Green Deal and subsequent strategies, based on the different scenarios outlined in the Impact Assessment and innovative waste management options. Lowering the limit in future will allow further development of analytical methods and waste management technologies.

EXPLANATORY STATEMENT

The European Commission has proposed to review the Annexes IV and V of the Regulation (EU) 2019/1021 (POPs Regulation) to ensure their alignment with the international obligations, particularly the Stockholm Convention whose main goal is “to protect human health and the environment from persistent organic pollutants”, bearing in mind the “precautionary approach” (Article 1 thereof). As POPs belong to the most dangerous chemicals in the world and are linked to irreversible impacts on public health and environment, the Stockholm Convention requires Parties to prohibit and/or take the legal and administrative measures necessary to eliminate both the production and use of chemicals listed in Annex A, and the import and export of those chemicals.

The limits that the rapporteur proposes to the respective Annexes IV (related to waste management of POPs) will not only lead towards better implementation of EU’s international obligations, but also secure better alignment between the POPs Regulation and the EU Green Deal’s goals - specifically the ambition for a toxic free environment and a truly circular economy. Further, his proposals are based on clear positions of the European Parliament, which underlined the necessity of ensuring adequate protection of health and environment from toxic substances repeatedly in the past, as well as the Basel Convention, aiming to protect human health and the environment against the adverse effects resulting from the generation, management, transboundary movements and disposal of hazardous and other wastes.

1. The longterm position of the European Parliament with regard the issue of contamination by toxic chemicals, including POPs:

- In its Resolution of 9 July 2015 on “resource efficiency: moving towards a circular economy” (2014/2208(INI)) which states that “recycling should not justify the perpetuation of the use of hazardous legacy substances”;
- In its position of 13 September 2018 on the “options to address the interface between chemical, product and waste legislation” (P8_TA(2018)0353) which declares that substances of concern are those that meet the criteria set out in Article 57 of REACH as substances of very high concern, substances prohibited under the Stockholm Convention (POPs), specific substances restricted in articles listed in Annex XVII to REACH and specific substances regulated under specific sectoral and/or product legislation;
- In Resolution of 15 January 2020 on the European Green Deal (P9_TA(2020)0005), it underlined “the importance of developing non-toxic material cycles”, called for “stepping up the substitution of substances of very high concern” and on the Commission “to consider measures to address imported products containing substances or components that are banned within the EU”. It also explicitly states that banned substances “should not be reintroduced on the EU market in consumer products through recycling activities”;
- In Resolution of 10 July 2020 on the Chemicals Strategy for Sustainability (P9_TA(2020)0201) it expressed importance of “developing non-toxic material cycles” and considered “that articles made from virgin materials and those made from recycled materials should fulfil the same chemical standards” and reaffirmed that in accordance with the waste hierarchy, as defined in the Waste Framework Directive, “prevention takes priority over recycling and that, accordingly, recycling should not justify the

perpetuation of the use of hazardous legacy substances”. Furthermore, it reiterated that “the issue of products containing legacy substances of concern should be dealt with by means of an efficient tracking and disposal system”;

- Last but not least, in its resolution of 10 February 2021 on the New Circular Economy Action Plan (2020/2077(INI)) it expressed that for the transition to truly circular economy and sustainable single market, it is important to ensure clean, non-toxic and restorative material cycles and to promote a high quality of material collection flows, reuse and recycling, to maintain materials at their highest value. Finally, it has called for “swift actions to implement the Chemical Strategy for Sustainability Towards a Toxic Free Environment”.

2. Addressing concerns regarding impacts on public health and environment and contamination of Circular economy by POPs

As POPs persist in the environment and bioaccumulate, they pose a threat to the environment and to human health all over the globe. If released, these pollutants are transported across international boundaries far from their sources and even accumulate in regions where they have never been used or produced. Adoption of high limits leads to contamination of recycling by POPs, which re-enter back to the economy instead of being disposed of. The rapporteur is therefore proposing to further strengthen the Commission thresholds in Annex IV and V.. This is done with respect to the limits of what can be implemented realistically in the view of existing data and waste management possibilities.

For the sum of PBDEs, the rapporteur proposes a limit of 200 mg/kg with a further limitation to 100 within 5 years. For the SCPP, he proposes to limit it to the 420 mg/kg as this limit will not result in any disposal and recovery capacity bottlenecks in the EU. For the HBCDD, he proposes 200 mg/kg with a further limitation to 100 in 5 years. Last but not least, for the PCDD/Fs + dl PCBs, he proposes middle value of 0.003 mg TEQ/ kg reflecting potential impacts on households and municipalities.

Furthermore, the rapporteur is including in the Annex IV thresholds for the Perfluorohexane sulfonic acid (PFHxS), its salts and PFHxS-related compounds, as the Commission also acknowledges in its impact assessment to this revision that the European Parliament and the Council will need to include them soon as they are going to be listed in the Stockholm Convention in 2022, following the recommendation of the POPs review Committee in 2019. The rapporteur believes that inclusion of the PFHxS will give the EU clear negotiating mandate before the meeting of the Parties, but also save administrative capacities of the co-legislators. The threshold is set in line with the lowered threshold for PFOA, its salts and PFOA related compounds to reflect the commitment in the Chemical Strategy for Sustainability to reduce the contamination by PFAS.

Last but not least, the rapporteur incorporates commitment to address incoherence between Commission Decision 2014/955/EU of 18 December 2014 amending Decision 2000/532/EC on the list of waste pursuant to Directive 2008/98/EC of the European Parliament and of the Council and the POP Regulation (EU) 2019/1021 as regard concentration limits that qualifies a waste as a POP-waste or those above which a waste is hazardous.

The rapporteur believes that his proposal will help eliminating the risk of exporting hazardous chemicals via Union waste into developing countries, as identified by the African Regional

Meeting prior the meetings of the conferences of the Parties to the Basel, Rotterdam and Stockholm conventions(18-20 March 2019, Nairobi), which strongly supported the adoption of the strictest POPs levels for definitions of low levels of persistent organic pollutant as part of technical guidelines of the Basel Convention.