



EUROPEAN PARLIAMENT

2009 – 2014

Consolidated legislative document

14.12.2011

EP-PE_TC1-COD(2010)0298

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POSITION OF THE EUROPEAN PARLIAMENT

adopted at first reading on 14 December 2011 with a view to the adoption of Regulation (EU) No .../2012 of the European Parliament and of the Council amending Regulation (EC) No 648/2004 as regards the use of phosphates and other phosphorous compounds in consumer laundry detergents and consumer automatic dishwasher detergents
(EP-PE_TC1-COD(2010)0298)

PE 473.476

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POSITION OF THE EUROPEAN PARLIAMENT

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(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 132, 3.5.2011, p. 71.

² Position of the European Parliament of 14 December 2011

Whereas:

- (1) In its Report of 4 May 2007 to the Council and the European Parliament, the Commission evaluated, pursuant to Regulation (EC) No 648/2004¹, the use of phosphates in detergents. Following further analysis, it has been concluded that the use of phosphates in consumer laundry detergents and consumer automatic dishwasher detergents should be limited in order to reduce the contribution of phosphates from detergents to eutrophication risks and to reduce the cost of phosphates removal in waste water treatment plants. Those cost savings outweigh the cost of reformulating consumer laundry detergents with alternatives to phosphates.
- (2) Efficient alternatives to phosphate-based consumer laundry detergents require small amounts of other phosphorous compounds, namely phosphonates which, if used in increasing quantities, might be of concern for the environment. While it is important to encourage the use of alternative substances with a more favourable environmental profile than phosphates and other phosphorus compounds in the manufacture of consumer laundry detergents and consumer automatic dishwasher detergents, such substances should, under their normal conditions of use, present no risk, or a lower risk, to humans and/or the environment. The REACH² system should therefore, where appropriate, be used to evaluate such substances.

¹ OJ L 104, 8.4.2004, p. 1.

² Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency (OJ L 396, 30.12.2006, p. 1.).

- (3) The interaction between phosphates and other phosphorous compounds requires a careful choice of the scope and level of the limitation on the use of phosphates in consumer laundry detergents and consumer automatic dishwasher detergents. The limitation should apply not only to phosphates, but also to all phosphorous compounds in order to preclude a mere substitution of other phosphorous compounds for phosphates. The limit on phosphorus content should be low enough to effectively prevent the marketing of phosphate-based consumer laundry detergent formulations, while being high enough to allow the minimum quantity of phosphonates required for alternative formulations.

- (4) It is currently not appropriate to extend limitations on the use of phosphates and other phosphorous compounds in consumer laundry detergents and consumer automatic dishwasher detergents to industrial and institutional detergents at the level of the Union because suitable technically and economically feasible alternatives to the use of phosphates in those detergents are not yet available. As concerns consumer automatic dishwasher detergents, alternatives are likely to be more widely available in the near future. It is therefore appropriate to provide a restriction on the use of phosphates in those detergents. Such a restriction should apply from a future date by which time alternatives to phosphates are expected to be widely available, in order to stimulate the developments of new products. It is also appropriate to specify a maximum permissible phosphorus content, based on evidence including existing national restrictions for phosphorus in consumer automatic dishwasher detergents. However, it is also necessary to provide that the Commission should, before that restriction becomes applicable throughout the Union, carry out a thorough assessment of the limit value based on the most recent available data and, if justified, present a legislative proposal. That assessment should cover the impact on the environment, industry and consumers of consumer automatic dishwasher detergents with phosphorus levels above and below the limit value set out in Annex VIa and alternatives, taking into account matters including their cost, availability, cleaning efficiency and impact on waste water treatment.

- (5) One of the aims of this Regulation is to protect the environment by reducing eutrophication caused by phosphorus in detergents used by consumers. It would therefore not be appropriate to force Member States that already have restrictions concerning phosphorus in consumer automatic dishwasher detergents to adapt those restrictions before the Union restriction becomes applicable. Furthermore, it is desirable that Member States be permitted to phase in the restrictions set out in this Regulation as early as possible.
- (6) A definition of 'cleaning' should be included in Regulation (EC) No 648/2004 instead of a reference to the relevant ISO standard to facilitate readability, and definitions of 'consumer laundry detergent' and 'consumer automatic dishwasher detergent' should also be included. Furthermore, it is appropriate to clarify the definition of 'placing on the market' and to include a definition of 'making available on the market'.
- (7) In order to provide accurate information within the shortest possible timescale, it is appropriate to modernise the way in which the Commission publishes the lists of competent authorities and approved laboratories.

- (8) In order to adapt Regulation (EC) No 648/2004 to scientific and technical progress, to introduce provisions on solvent-based detergents and in order to introduce appropriate individual risk-based concentration limits for fragrance allergens, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amendments to the Annexes to that Regulation that are necessary to meet those objectives. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.
- (9) Member States should lay down rules on penalties applicable to infringements of Regulation (EC) No 648/2004 and ensure that they are implemented. Those penalties should be effective, proportionate and dissuasive.
- (10) It is appropriate to provide for deferred application of the restrictions established in this Regulation so as to allow operators, in particular small and medium-sized enterprises, to reformulate their phosphate-based consumer laundry detergents and consumer automatic dishwasher detergents using alternatives during their usual reformulation cycle in order to minimise the costs thereof.
- (11) Since the objectives of this Regulation, namely to reduce the contribution of phosphates from consumer detergents to eutrophication risks and to reduce the costs of phosphates removal in waste water treatment plants and to ensure the smooth functioning of the internal market in consumer laundry detergents and consumer automatic dishwasher detergents, cannot be sufficiently achieved by Member States because national measures with different technical specifications cannot ensure a comprehensive improvement in the quality of water crossing national borders, and can therefore be better achieved at the level of the Union, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (12) Regulation (EC) No 648/2004 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC) No 648/2004 is hereby amended as follows:

(1) In Article 1(2), the third and fourth indents are replaced by the following, and a fifth indent is added:

- "– the additional labelling of detergents, including fragrance allergens;
- the information that manufacturers must hold at the disposal of the Member States competent authorities and medical personnel;
- limitations on the content of phosphates and other phosphorous compounds in consumer laundry detergents and consumer automatic dishwasher detergents.";

(2) Article 2 is amended as follows:

(a) the following points are inserted:

- "1a. 'Consumer laundry detergent' means a detergent for laundry placed on the market for use by non-professionals, including in public laundrettes.
- 1b. 'Consumer automatic dishwasher detergent' means a detergent placed on the market for use in automatic dishwashers by non-professionals.";

(b) point 3 is replaced by the following:

"3. 'Cleaning' means the process by which an undesirable deposit is dislodged from a substrate or from within a substrate and brought into a state of solution or dispersion.";

(c) point 9 is replaced by the following:

"9. 'Placing on the market' means the first making available on the Union market. Import into the Union customs territory shall be deemed to be placing on the market.

9a. 'Making available on the market' means any supply for distribution, consumption or use on the Union market in the course of a commercial activity, whether in return for payment or free of charge.";

(3) The following Article is inserted:

"Article 4a

Limitations on the content of phosphates and of other phosphorous compounds

Detergents listed in Annex VIa that do not comply with the limitations on the content of phosphates and of other phosphorous compounds laid down in that Annex shall not be placed on the market from the dates set out therein.";

- (4) In Article 8, paragraph 4 is replaced by the following:
- "4. The Commission shall make publicly available the lists of competent authorities, mentioned in paragraph 1, and of approved laboratories, mentioned in paragraph 2.";
- (5) In Article 11, paragraph 4 is replaced by the following:
- "4. Additionally, the packaging of consumer laundry detergents and consumer automatic dishwasher detergents shall bear the information provided for in Annex VII, Part B.";
- (6) In Article 12, paragraph 3 is deleted;
- (7) Articles 13 and 14 are replaced by the following:
- "Article 13*
Adaptation of Annexes
1. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a in order to introduce amendments necessary for adapting Annexes I to IV, VII and VIII to scientific and technical progress. The Commission shall, wherever possible, use European standards.
 2. The Commission shall be empowered to adopt delegated acts in accordance with Article 13a in order to introduce amendments to the Annexes of this Regulation regarding solvent-based detergents.

3. Where individual risk-based concentration limits for the fragrance allergens are established by the Scientific Committee on Consumer Safety, the Commission shall adopt delegated acts in accordance with Article 13a in order to adapt the limit of 0,01 % set out in Section A of Annex VII accordingly.

Article 13a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 13 shall be conferred on the Commission for a period of five years from ...⁺. By ⁺⁺, the Commission shall draw up a report in respect of the delegation of power. The delegation of power shall be tacitly extended for further periods of five years, unless the European Parliament or the Council opposes such extension not later than three months before the end of each such period.

⁺ OJ: please insert the date of entry into force of the amending Regulation.

⁺⁺ OJ: please insert a date: entry into force of the amending Regulation + 4 years 3 months.

3. The delegation of power referred to in Article 13 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Article 13 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

Article 14

Free movement clause

1. Member States shall not prohibit, restrict or impede the making available on the market of detergents, and/or of surfactants for detergents, which comply with the requirements of this Regulation, on grounds that are dealt with in this Regulation.

2. Member States may maintain or lay down national rules concerning restrictions on the content of phosphates and of other phosphorous compounds in detergents for which no restrictions on the content are set out in Annex VIa where justified, in particular, on grounds such as the protection of public health or the environment and where technically and economically feasible alternatives are available.
3. Member States may maintain national rules that were in force on ...⁺ concerning restrictions on the content of phosphates and of other phosphorous compounds in detergents for which restrictions set out in Annex VIa have not yet become applicable. Such existing national measures shall be reported to the Commission by ...⁺⁺ and may remain in force until the date when the restrictions set out in Annex VIa apply.

⁺ OJ: please insert a date 20 days after publication of the amending Regulation.

⁺⁺ OJ: please insert a date 6 months after publication of the amending Regulation.

4. From ...⁺ until 31 December 2016 Member States may adopt national rules that implement the restriction on the content of phosphates and of other phosphorous compounds laid down in the point 2 of Annex VIa, where justified, in particular, on grounds such as the protection of public health or the environment and where technically and economically feasible alternatives are available. Member States shall notify such measures to the Commission in accordance with Directive 98/34/EC of the European Parliament and of the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations and of rules on information society services*.
5. The Commission shall make publicly available the list of national measures referred to in paragraphs 3 and 4.

* OJ L 204, 21.7.1998, p. 37.";

⁺ OJ: please insert a date 20 days after publication of the amending Regulation (= date of entry into force thereof).

(8) In Article 15, paragraph 1 is replaced by the following:

"1. Where a Member State has justifiable grounds for believing that a specific detergent, although complying with the requirements of this Regulation, constitutes a risk to the safety or health of humans or of animals or a risk to the environment, it may take all appropriate provisional measures, commensurate with the nature of the risk, in order to ensure that the detergent concerned no longer presents that risk, is withdrawn from the market or recalled within a reasonable period or its availability is otherwise restricted.

The Member State shall immediately inform the other Member States and the Commission thereof, giving the reasons for its decision.";

(9) Article 16 is replaced by the following:

*"Article 16
Report*

1. By 31 December 2014, the Commission shall, taking into account information from Member States on the content of phosphorus in consumer automatic dishwasher detergents placed on the market in their territories and in the light of any existing or new scientific information available to it regarding substances employed in phosphates-containing and alternative formulations, evaluate by way of a thorough assessment whether the restriction set out in Point 2 of Annex VIa should be modified. That assessment shall include an analysis of the impact on the environment, industry and consumers of consumer automatic dishwasher detergents with phosphorus levels above and below the limit value set out in Annex VIa, taking into account matters including cost, availability, cleaning efficiency and the impact on waste water treatment. The Commission shall submit that thorough assessment to the European Parliament and to the Council.

2. In addition, if the Commission, on the basis of the thorough assessment referred to in paragraph 1, considers that the restriction of phosphates and other phosphorous compounds used in consumer automatic dishwasher detergents requires revision, it shall, by 1 July 2015, present an appropriate legislative proposal. Any such proposal must be aimed at minimising the negative impact from all consumer automatic dishwasher detergent products on the wider environment, whilst considering any economic costs as identified in that thorough assessment. Unless the European Parliament and the Council, on the basis of such a proposal, decide otherwise by 31 December 2016, the limit value set out in point 2 of Annex VIa shall become the limitation for phosphorus content in consumer automatic dishwasher detergents from the date set out in that point.";

- (10) Article 18 is replaced by the following:

"Article 18
Penalties

Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. This may also include appropriate measures allowing the competent authorities of the Member States to prevent the making available on the market of detergents or surfactants for detergents that fail to comply with this Regulation. The penalties provided for must be effective, proportionate and dissuasive. Member States shall notify those provisions and any subsequent amendment affecting those provisions to the Commission without delay.

Those rules shall include measures allowing the competent authorities of Member States to detain consignments of detergents that fail to comply with this Regulation.";

- (11) The text set out in the Annex to this Regulation is inserted as Annex VIa to Regulation (EC) No 648/2004;

(12) Annex VII shall be amended as follows:

a) in Section A, the following text is deleted:

"If individual risk-based concentration limits for the fragrance allergens are subsequently established by the SCCNFP, the Commission shall propose the adoption of such limits to replace the limit of 0,01 % mentioned above. Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 12(3).",

b) Section B is replaced by the following:

"B. Labelling of dosage information

As prescribed in Article 11(4), the following provisions on labelling shall apply to the packaging of detergents sold to the general public.

Consumer Laundry Detergents

The packaging of detergents sold to the general public intended to be used as laundry detergents shall bear the following information:

- the recommended quantities and/or dosage instructions expressed in millilitres or grams appropriate to a standard washing machine load, for soft, medium and hard water hardness levels and making provision for one or two cycle washing processes,

- for heavy-duty detergents, the number of standard washing machine loads of 'normally soiled' fabrics, and, for detergents for delicate fabrics, the number of standard washing machine loads of lightly-soiled fabrics, that can be washed with the contents of the package using water of medium hardness, corresponding to 2,5 millimoles CaCO_3/l ,
- the capacity of any measuring cup, if provided, shall be indicated in millilitres or grams, and markings shall be provided to indicate the dose of detergent appropriate for a standard washing machine load for soft, medium and hard water hardness levels.

The standard washing machine loads are 4,5 kg dry fabric for heavy-duty detergents and 2,5 kg dry fabric for light-duty detergents, in line with the definitions of Commission Decision 1999/476/EC of 10 June 1999 establishing the Ecological Criteria for the award of the Community eco-label to Laundry Detergents*. A detergent shall be considered to be a heavy-duty detergent unless the claims of the manufacturer predominantly promotes fabric care i.e. low temperature wash, delicate fibres and colours.

Consumer Automatic Dishwasher Detergents

The packaging of detergents sold to the general public intended to be used as automatic dishwasher detergents shall bear the following information:

- the standard dosage expressed in gram or ml or number of tablets for the main washing cycle for normally soiled tableware in a fully loaded 12 place settings dishwasher, making provisions, where relevant, for soft, medium, and hard water hardness.

* OJ L 187, 20.7.1999, p. 52. Decision as amended by Decision 2011/264/EU (OJ L 111, 30.4.2011, p. 34)."

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

For the European Parliament
The President

For the Council
The President

ANNEX

"ANNEX VIa

LIMITATIONS ON THE CONTENT OF PHOSPHATES AND OF OTHER PHOSPHOROUS COMPOUNDS

Detergent	Limitations	Date as of which the limitation applies
1. Consumer laundry detergents	Shall not be placed on the market if the total content of phosphorus is equal to or greater than 0,5 grams in the recommended quantity of the detergent to be used in the main cycle of the washing process for a standard washing machine load as defined in section B of Annex VII for water of hard water hardness <ul style="list-style-type: none">– for 'normally soiled' fabrics in the case of heavy-duty detergents;– for 'lightly soiled' fabrics in the case of detergents for delicate fabrics.	30 June 2013
2. Consumer automatic dishwasher detergents	Shall not be placed on the market if the total content of phosphorus is equal to or greater than 0,3 grams in the standard dosage as defined in section B of Annex VII	1 January 2017

"