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COMMISSION STAFF WORKING DOCUMENT

Subsidiarity Grid

Accompanying the document

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

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Subsidiarity Grid

1. Can the Union act? What is the legal basis and competence of the Unions' intended action?
1.1 Which article(s) of the Treaty are used to support the legislative proposal or policy initiative?
This initiative has the same legal base as the Regulation (EC) No 648/2004 of the European Parliament and of the Council of 31 March 2004 on detergents: Article 114 of the Treaty on the functioning of the European Union on the approximation of national rules for the establishment and well-functioning of the internal market.
1.2 Is the Union competence represented by this Treaty article exclusive, shared or supporting in nature?
In the case of internal market, the Union competence is shared according to Article 4(2) of the Treaty on the functioning of the European Union.
*Subsidiarity does not apply for policy areas where the Union has **exclusive** competence as defined in Article 3 TFEU[1]. It is the specific legal basis which determines whether the proposal falls under the subsidiarity control mechanism. Article 4 TFEU[2] sets out the areas where competence is shared between the Union and the Member States. Article 6 TFEU[3] sets out the areas for which the Unions has competence only to support the actions of the Member States.*
2. Subsidiarity Principle: Why should the EU act?
2.1 Does the proposal fulfil the procedural requirements of Protocol No. 2[4]: - Has there been a wide consultation before proposing the act? - Is there a detailed statement with qualitative and, where possible, quantitative indicators allowing an appraisal of whether the action can best be achieved at Union level?
For the preparation of this proposal, the Commission has consulted national authorities, industry associations, companies, consumer associations, civil society and academia. It has also consulted the Detergents Working Group. The proposal is based on a comparative assessment of a number of policy options, and reflects the option that scored best in terms of economic, social, environmental and health impacts, effectiveness, efficiency and coherence. The explanatory memorandum and the impact assessment (chapter 3) contain a section on the principle of subsidiarity. For more details, see question 2.2 below.
2.2 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the conformity with the principle of subsidiarity?
Yes, those documents contain such a justification. The impact assessment contains the following text: "During the consultation activities for the detergents evaluation, there was widespread consensus among all interested stakeholders that the issues addressed by the Regulation continue to require action at the EU level. This is because, the issues related to detergents, both in terms of protection of human health and the environment, have

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E003&from=EN
[2] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008E004&from=EN
[3] https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008E006:EN:HTML
[4] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016E/PRO/02&from=EN

an EU-wide dimension. This is for example the case of the biodegradability requirements for surfactants to protect the environment or the communication of ingredient information to consumers to protect human health. The same applies to the identified problems that do not present any national or sub-national specificities but rather have an EU-wide impact (e.g. refill sales, microbial cleaning products, lack of understanding and awareness of chemicals labels by consumers) and cannot, therefore, be addressed at national level in order to ensure the well-functioning of the internal market and an equal level of human health and environmental protection across the EU. Further, since the Regulation fully harmonises the matters it explicitly covers, Member States are not allowed to make changes to the scope, concepts and definitions or other requirements of the Detergents Regulation: these must therefore be made at EU level. In the absence of a uniform set of rules applicable to detergents, manufacturers would be faced with 27 different sets of rules, leading to different levels of protection for consumers and professional users, market barriers and distorted competition among market operators from different Member States.
Finally, the abolition of some superfluous information obligations imposed by the Regulation can only be achieved through an amendment of the Regulation."

2.3 Based on the answers to the questions below, can the objectives of the proposed action be achieved sufficiently by the Member States acting alone (necessity for EU action)?

The objectives of the proposed action cannot be achieved sufficiently by the Member States acting alone. The problems identified in the impact assessment are transboundary in nature, they are widespread across the EU and cannot be solved individually by the Member States. The absence of EU level action would conflict with the objectives of the Treaty. Although the Member States cannot deviate from the provisions of the proposal, they are given some additional possibilities. Member States are not overstretched in achieving the objectives of the planned measure and are therefore largely supportive for the adoption.

(a) Are there significant/appreciable transnational/cross-border aspects to the problems being tackled? Have these been quantified?

Yes. Most problems identified in the impact assessment are indeed transboundary in nature (e.g. biodegradability requirements for surfactants, communication of ingredient information to consumers, refill sales, microbial cleaning products, lack of understanding and awareness of chemicals labels by consumers). Those problems and their impacts were quantified and, if impossible, a qualitative analysis was carried out.

(b) Would national action or the absence of the EU level action conflict with core objectives of the Treaty[5] or significantly damage the interests of other Member States?

Yes, this would be the case, as a upcoming divergence of measures taken by Member States would disrupt the functioning of the internal market and would lead to different levels of protection of health and environment, even more considering that the CLP and REACH Regulation frameworks exist already. Without the proposed harmonised rules (e.g. for microbial cleaning products, for refill sales) diverging national criteria would emerge on the EU's single market, thereby hindering the emergence of innovative, sustainable products on the detergents market. In absence of EU level action the protection and the improvement of the quality of the environment could not be ensured.

(c) To what extent do Member States have the ability or possibility to enact appropriate measures?

The Treaty establishes the obligation that Member States shall exercise their competence to the

[5] https://europa.eu/european-union/about-eu/eu-in-brief_en

extent that the Union has not exercised its competence (Article 2(2) TFEU); by adopting the Detergents Regulation in 2004 the Union has exercised its competence in the field.
In this framework, the proposal does not make it possible for Member States to deviate from its provisions. On the other hand, the proposal gives some additional possibilities to Member States, e.g. to maintain or lay down national rules concerning restrictions on the content of phosphates and of other phosphorus compounds in some specific detergents (see below 3.2.).

(d) How does the problem and its causes (e.g. negative externalities, spill-over effects) vary across the national, regional and local levels of the EU?

Although the problem and its causes may (slightly) vary between the Member States, they exist everywhere in the EU to a certain extent. The problem that the Detergents Regulation does not take account of new market developments is the same in all Member States. Also, efficient information requirements for detergents are missing on national, regional and local levels of the EU.

(e) Is the problem widespread across the EU or limited to a few Member States?

The problem is widespread across the EU. It concerns detergents which move freely in the internal market. It is therefore relevant for all Member States.

(f) Are Member States overstretched in achieving the objectives of the planned measure?

No. Member States are largely supportive for the adoption of this legislative proposal.

(g) How do the views/preferred courses of action of national, regional and local authorities differ across the EU?

Public authorities are of the uniform view that further action is needed and an agreement exists to a large extent about the direction of the proposed measures.

2.4 Based on the answer to the questions below, can the objectives of the proposed action be better achieved at Union level by reason of scale or effects of that action (EU added value)?

Yes. The detergents evaluation concluded that the added value of having harmonisation rules for the making available and placing on the market of detergents was uncontested.

(a) Are there clear benefits from EU level action?

Yes. Regulatory action at EU level would ensure a regulatory context that allows innovation for new types of products, new marketing techniques and new labelling technologies across the single market while providing the same level of protection of human health and the environment across the EU.

(b) Are there economies of scale? Can the objectives be met more efficiently at EU level (larger benefits per unit cost)? Will the functioning of the internal market be improved?

By removing overlapping labelling requirements under the wider EU regulatory framework applicable to detergents, and by allowing some of the mandatory information to be provided by digital means only, the proposal will reduce the regulatory burden on economic operators. The gain of space on the physical label will allow for more language versions, which will reduce the costs of sales across the single market.

(c) What are the benefits in replacing different national policies and rules with a more homogenous policy approach?

The issues related to detergents, both in terms of protection of human health and the environment, have an EU-wide dimension. This is for example the case of the biodegradability requirements for surfactants to protect the environment or the communication of ingredient information to consumers to protect human health. The same applies to the identified problems that do not present any national or sub-national specificities but rather have an EU-wide impact (e.g. refill sales, microbial cleaning products, lack of understanding and awareness of chemicals labels by consumers) and cannot, therefore, be addressed at national level in order to ensure the well-functioning of the internal market and an equal level of human health and environmental protection across the EU.

(d) Do the benefits of EU-level action outweigh the loss of competence of the Member States and the local and regional authorities (beyond the costs and benefits of acting at national, regional and local levels)?

In the absence of a uniform set of rules applicable to detergents, manufacturers would be faced with 27 different sets of rules, leading to different levels of protection for consumers and professional users, market barriers and distorted competition among market operators from different Member States.

Finally, the abolition of some superfluous information obligations imposed by the Regulation can only be achieved through an amendment of the Regulation.

(e) Will there be improved legal clarity for those having to implement the legislation?

- Ambiguous definitions will be clarified.
- Clarity and legal certainty will be improved because it will be clarified that refill sales are covered by the Regulation.
- Microbial cleaning products: clear requirements and explicit coverage of these products by the Regulation will improve legal clarity for economic operators.
- Elimination of duplications in the labelling requirements and simplification of framework, also through the introduction of digital labelling, will allow for clearer and more easily implementable rules.

3. Proportionality: How the EU should act

3.1 Does the explanatory memorandum (and any impact assessment) accompanying the Commission's proposal contain an adequate justification regarding the proportionality of the proposal and a statement allowing appraisal of the compliance of the proposal with the principle of proportionality?

The explanatory memorandum mentions that the proportionality of this proposal has been evaluated in the context of the fact that it is intended to replace an existing EU Regulation. The proposal aims for maximum elimination of redundant regulatory overlaps, which will ease the regulatory burden without jeopardising the current level of protection of health and the environment. Facilitation of refill sales and regulatory acceptance of digital labelling will also have that effect. The new measures to control microbial cleaning products are adapted to the current level of scientific knowledge about the effects of the products on this emerging market.

3.2 Based on the answers to the questions below and information available from any impact

assessment, the explanatory memorandum or other sources, is the proposed action an appropriate way to achieve the intended objectives?
This proposal is an appropriate way to achieve the intended objectives given that they can be better achieved at Union rather than at national level. The proposal is based on a comparative assessment of a number of policy options, and reflects the option that scored best in terms of economic, social, environmental and health impacts, effectiveness, efficiency and coherence.
(a) Is the initiative limited to those aspects that Member States cannot achieve satisfactorily on their own, and where the Union can do better?
Yes, the intended objectives can be better achieved at Union level. The proposed harmonised criteria for microbial cleaning products will ensure that microbes used in detergents are safe for human health and the environment. They will also avoid the emergence of diverging national criteria on the EU's single market, thereby promoting the emergence of innovative, sustainable products on the detergents market. The same is true for the proposed harmonised rules for refill sales, which will therefore contribute to significant environmental benefits in terms of packaging waste.
(b) Is the form of Union action (choice of instrument) justified, as simple as possible, and coherent with the satisfactory achievement of, and ensuring compliance with the objectives pursued (e.g. choice between regulation, (framework) directive, recommendation, or alternative regulatory methods such as co-legislation, etc.)?
The proposal of a Regulation concerns amendments to Regulation (EC) No 648/2004. This way forward is the most simple and effective way of achieving the said policy objectives.
(c) Does the Union action leave as much scope for national decision as possible while achieving satisfactorily the objectives set? (e.g. is it possible to limit the European action to minimum standards or use a less stringent policy instrument og approach?)
The proposed Union action does not exceed what it is needed to achieve the objectives followed. Member States may maintain or lay down national rules concerning restrictions on the content of phosphates and of other phosphorus compounds in detergents for which no restrictions on the content are set out in Annex IV 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.
(d) Does the initiative create financial or administrative cost for the Union, national governments, regional or local authorities, economic operators or citizens? Are these costs commensurate with the objective to be achieved?
There will not be significant impacts on national budgets and administrations, although Member States may face some adaptation costs to adjust to the new Regulation. As regards the enforcement of digital labelling, this will not have any significant impact since market surveillance authorities already have digital literacy and deal with digital devices within their professional capacity.
(e) While respecting the Union law, have special circumstances applying in individual Member States been taken into account?
Not relevant.