Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast) (Text with EEA relevance)

REGULATION (EU) 2019/1021 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 20 June 2019

on persistent organic pollutants

(recast)

(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 192(1) 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 Committee[(1)],

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure[(2)],

Whereas:

(1) Regulation (EC) No 850/2004 of the European Parliament and of the Council[(3)] has been substantially amended several times. Since it is necessary to make further amendments, that Regulation should be recast in the interests of clarity.

(2) The Union is seriously concerned by the continuous release of persistent organic pollutants (‘POPs’) into the environment. Those chemical substances are transported across international boundaries, far from their sources, and they persist in the environment, bioaccumulate through the food web, and pose a risk to human health and the environment. Therefore, further measures need to be taken in order to protect human health and the environment against those pollutants.

(3) In view of its responsibilities for the protection of the environment, the Union approved on 19 February 2004 the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants[(4)] (‘the Protocol’) and approved on 14 October 2004 the Stockholm Convention on Persistent Organic Pollutants[(5)] (‘the Convention’).

(4) In order to ensure coherent and effective implementation of the Union's obligations under the Protocol and the Convention, it is necessary to establish a common legal framework within which to take measures designed, in particular, to eliminate

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the manufacturing, placing on the market and use of intentionally manufactured POPs. Furthermore, POPs' characteristics should be taken into consideration in the framework of the relevant Union assessment and authorisation schemes.

(5) When implementing the provisions of the Convention at Union level, it is necessary to ensure coordination and coherence with the provisions of the Rotterdam Convention on the prior informed consent procedure for certain hazardous chemicals and pesticides in international trade, which was approved by the Union on 19 December 2002[(6)], and with the provisions of the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal, which was approved by the Union on 1 February 1993[(7)] and of the Minamata Convention on Mercury, which was approved by the Union on 11 May 2017[(8)]. This coordination and coherence should also be maintained when participating in the implementation and further development of the Strategic Approach to International Chemicals Management (SAICM), adopted by the First International Conference on Chemicals Management in Dubai on 6 February 2006, and the Sound Management of Chemicals and Waste Beyond 2020 within the United Nations framework.

(6) Moreover, considering that the provisions of this Regulation are underpinned by the precautionary principle as set forth in the Treaty on the Functioning of the European Union (TFEU), and mindful of the precautionary approach to environmental protection as set forth in Principle 15 of the Rio Declaration on Environment and Development, and in view of the aim of the elimination, where feasible, of the release of POPs into the environment, it is appropriate in certain cases to provide for control measures stricter than those under the Protocol and the Convention.

(7) In the Union, the placing on the market and use of most of the POPs listed in the Protocol or the Convention have already been phased out as a result of the prohibitions laid down in, inter alia, Regulations (EC) No 1907/2006[(9)], (EC) No 1107/2009[(10)] and (EU) No 528/2012[(11)] of the European Parliament and of the Council. However, in order to fulfil the Union's obligations under the Protocol and the Convention, and to minimise the release of POPs, it is necessary and appropriate also to prohibit the manufacturing of those substances and to restrict exemptions to a minimum so that exemptions only apply where a substance fulfils an essential function in a specific application.

(8) For reasons of clarity and consistency with other relevant Union legislative acts, certain definitions should be specified, and terminology should be aligned with that used in Regulation (EC) No 1907/2006 and Directive 2008/98/EC of the European Parliament and of the Council[(12)].

(9) Exports of substances covered by the Convention are regulated by Regulation (EU) No 649/2012 of the European Parliament and of the Council[(13)] and therefore need not be further addressed in this Regulation.

(10) Obsolete or carelessly managed stockpiles of POPs may seriously endanger the environment and human health through, for instance, contamination of soil and ground water. It is appropriate, therefore, to lay down stricter rules concerning the management of such stockpiles compared to those laid down in the Convention. Stockpiles of prohibited substances should be treated as waste, while stockpiles of substances the

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manufacturing or use of which is still allowed should be notified to the authorities and properly supervised. In particular, existing stockpiles which consist of or contain banned POPs should be managed as waste as soon as possible. If other substances are banned in the future, their stocks should also be destroyed without delay, and no new stockpiles should be built up.

(11) In line with the Protocol and the Convention, releases of POPs which are unintentional by-products of industrial processes should be identified and reduced as soon as possible, with the ultimate aim of elimination, where feasible. Appropriate national action plans, covering all sources and measures, including those provided for under existing Union legislation, should be developed, updated and implemented, as appropriate, as soon as possible, to reduce such releases continuously and cost-effectively. To this end, appropriate tools should be developed in the framework of the Convention.

(12) The Guidelines on Best Available Techniques and Provisional Guidance on Best Environmental Practices Relevant to Article 5 and Annex C of the Stockholm Convention on Persistent Organic Pollutants, which were adopted pursuant to the Stockholm Convention, should be used when considering proposals to construct new facilities or to significantly modify existing facilities using processes that release chemicals listed in Annex III to this Regulation.

(13) Appropriate programmes and mechanisms should be established or maintained, as appropriate, to provide adequate monitoring data on the presence of substances listed in Part A of Annex III in the environment. However, it is necessary to ensure that appropriate tools are available and can be used under economically and technically viable conditions.

(14) Under the Convention, the POP content in waste is to be destroyed or irreversibly transformed into substances that do not exhibit similar characteristics, unless other operations are environmentally preferable. In order for the Union to comply with its obligations under the Convention, it is necessary to lay down specific rules as regards those substances. To ensure a high level of protection, common concentration limits for the substances in waste should be established, monitored and enforced.

(15) Concerning polybrominated diphenyl ethers (PBDEs) listed in this Regulation, including decaBDE, the concentration limit for the sum of those substances in waste is set at 1 000 mg/kg. Considering that scientific and technical progress are rapidly evolving, the Commission should review that concentration limit and, where appropriate, adopt a legislative proposal to lower that value to 500 mg/kg. The Commission should act as quickly as possible and, in any event, not later than 16 July 2021.

(16) It is important to identify and separate waste consisting of, containing or contaminated by POPs at source in order to minimise the spread of those chemicals into other waste. Directive 2008/98/EC establishes Union rules on the management of hazardous waste, obliging Member States to take the necessary measures to require that establishments and undertakings which dispose of, recover, collect or transport hazardous waste, do not mix different categories of hazardous waste or mix hazardous waste with non-hazardous waste.

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(17) In order to promote the traceability of waste containing POPs and ensure control, the provisions of the record keeping system established in accordance with Article 17 of Directive 2008/98/EC should apply also to such waste containing POPs which is not defined as hazardous waste according to Commission Decision 2014/955/EU[(14)].

(18) There is a need to ensure the effective coordination and management of technical and administrative aspects of this Regulation at Union level. The European Chemicals Agency ('the Agency'), established by Regulation (EC) No 1907/2006, has the competence and experience in implementing Union legislation on chemicals and international agreements on chemicals. The Member States and the Agency should therefore carry out tasks with regard to the administrative, technical and scientific aspects of the implementation of this Regulation and the exchange of information. The role of the Agency should include the preparation and examination of technical dossiers, including stakeholder consultations, and the drawing up of opinions that should be used by the Commission in considering whether to come forward with a proposal for listing a substance as a POP in the Convention or the Protocol. In addition, the Commission, the Member States and the Agency should cooperate in order to implement the Union's international obligations under the Convention effectively.

(19) The Convention provides that each Party is to draw up, update and endeavour to implement, as appropriate, a plan for the implementation of its obligations under the Convention. Member States should provide opportunities for public participation in drawing up, implementing and updating their implementation plans. Since the Union and the Member States share competence in that regard, implementation plans should be drawn up and updated both at national and Union level. Cooperation and exchange of information, including on sites contaminated by POPs, between the Commission, the Agency and the authorities of the Member States should be promoted.

(20) Substances listed in Part A of Annex I or Part A of Annex II to this Regulation should only be allowed to be manufactured and used as closed-system site-limited intermediates if an annotation to that effect is expressly entered in the relevant Annex and if the manufacturer demonstrates to the Member State concerned that the substance is only manufactured and used under strictly controlled conditions.

(21) In accordance with the Convention and the Protocol, information on POPs should be provided to other Parties to those Agreements. The exchange of information with third countries not party to those Agreements should also be promoted.

(22) Since public awareness of the hazards that POPs pose to the health of present and future generations, as well as to the environment, particularly in developing countries, is often lacking, wide-scale information is needed to increase the level of caution and public understanding of the rationale for restrictions and bans. In accordance with the Convention, public awareness programmes on those substances as regards their health and environmental effects, especially for the most vulnerable groups, as well as training of workers, scientists, educators, technical and managerial personnel should be promoted and facilitated, as appropriate. The Union should ensure access to information, without prejudice to Regulations (EC) No 1049/2001[(15)]

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and (EC) No 1367/2006[16] of the European Parliament and of the Council, and to Directive 2003/4/EC of the European Parliament and of the Council[17].

(23) In order to promote the development of a comprehensive chemical exposure and toxicity knowledge base, in line with the General Union Environment Action Programme to 2020 'Living well, within the limits of our planet' ('the 7th EAP')[18], the Commission has established the Information Platform for Chemical Monitoring. The use of that platform should be encouraged as a means for Member States to comply with their obligations to report chemical occurrence data and to simplify and reduce their reporting obligations.

(24) Upon request, and within available resources, the Commission, the Agency and the Member States should cooperate in providing appropriate and timely technical assistance designed especially to strengthen the capacity of developing countries and countries with economies in transition to implement the Convention. Technical assistance should include the development and implementation of suitable alternative products, methods and strategies, under the Convention, to ensure that POPs only continue to be used when locally safe, effective and affordable alternatives are not available to the country in question.

(25) There should be regular evaluation of the effectiveness of measures taken to reduce releases of POPs. To that end, Member States should report regularly, in standardised form, to the Agency, in particular as regards release inventories, notified stockpiles and the manufacturing and placing on the market of restricted substances.

(26) To address the need for information on implementation and compliance, an alternative system of collecting and making information available should be introduced, taking into account the results of the Commission Report on Actions to Streamline Environmental Reporting and its related Fitness Check. In particular, Member States should make all relevant data accessible. That should ensure that the administrative burden on all entities remains as limited as possible. It requires that active dissemination at national level be done in accordance with Directives 2003/4/EC and 2007/2/EC of the European Parliament and of the Council[19], to ensure the appropriate infrastructure for public access, reporting and data-sharing between public authorities. In that context, Member States and the Agency should base the specifications for spatial data on the implementing acts adopted under Directive 2007/2/EC.

(27) The Convention and the Protocol provide that Parties thereto may propose additional substances for international action and consequently additional substances may be listed under those Agreements. In such cases, this Regulation should be amended accordingly.

(28) In order to amend certain non-essential elements of this Regulation, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of amending this Regulation by permitting, where appropriate, the manufacture and use of a substance listed in Part A of Annex I or Part A of Annex II to this Regulation as a closed-system site-limited intermediate and amending the deadlines in an annotation entered in the relevant Annex for that purpose, of amending Annex III to this Regulation in order to move a substance from Part B to Part A thereof and of amending Annexes I, II and III to this Regulation in order to adapt them to any change