Commission Regulation (EU) 2016/1005 of 22 June 2016 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards asbestos fibres (chrysotile) (Text with EEA relevance)

COMMISSION REGULATION (EU) 2016/1005

of 22 June 2016

amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards asbestos fibres (chrysotile)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to 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, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC[(1)], and in particular Article 68(1) thereof,

Whereas:

(1) Entry 6 of Annex XVII to Regulation (EC) No 1907/2006 prohibits the manufacture, placing on the market and use of asbestos fibres, and of articles and mixtures containing these fibres added intentionally.

(2) Member States could exempt the placing on the market and use of diaphragms containing chrysotile fibres for existing electrolysis installations. This included the possibility to exempt the placing on the market of chrysotile fibres for use in the manufacture or maintenance of such diaphragms and the use of chrysotile fibres for these purposes.

(3) Out of five electrolysis installations in relation to which Member States reported[(2)] in 2011 that they had granted exemptions, only two, in Sweden and Germany, remain in operation.

(4) On 18 January 2013, pursuant to the obligation in paragraph 1 of entry 6, the European Commission requested the European Chemicals Agency ('the Agency') to prepare an Annex XV dossier in accordance with Article 69(1) of REACH with a view to prohibiting the placing on the market and use of diaphragms containing chrysotile. On 17 January 2014, the Agency finalised the Annex XV dossier, which proposed to amend the existing restriction by limiting the duration of the exemptions granted by Member States for the placing on the market and use of diaphragms containing chrysotile and

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EU) 2016/1005. (See end of Document for details)*

of chrysotile fibres used exclusively in their maintenance to 31 December 2025 and enabling Member States to impose a reporting requirement to allow better monitoring and enforcement.

(5) The dossier was subsequently put out to public consultation and submitted for examination by the Committee for Risk Assessment (hereinafter 'RAC') and the Committee for Socio-Economic Analysis (hereinafter 'SEAC').

(6) On 26 November 2014 RAC adopted an opinion concluding that there is no worker exposure to chrysotile in one plant and that in the other exposure is minimised by risk management measures which are effective in controlling potential risks from the use of chrysotile to a risk level of low concern. The opinion further concluded that there is no release of chrysotile to the environment and therefore the health and environment benefits of immediate closure of the two plants would be negligible. Furthermore, due to process and technology specific considerations in one of the plants, no suitable alternative was available.

(7) In order to further the objective of phasing out the use of chrysotile in the EU and to improve the clarity and transparency of the existing exemption, RAC agreed with the proposed amendment set out in the Annex XV dossier. The opinion also concluded that action on a Union-wide basis is necessary.

(8) On 9 March 2015, SEAC adopted an opinion noting that in one plant the existing asbestos containing cells would be dismantled by 2025 and that in the other, the operator claimed that ongoing production level testing using chrysotile-free diaphragms in its current installation would lead to full substitution at the latest by 2025. SEAC also concluded that immediate closure of this plant would result in costs in terms of lost value added and jobs and took note of the commitment of the operator of the latter plant to cease all imports of chrysotile by the end of 2017. Given the overall objective of phasing out the use of chrysotile in the EU and in order to improve the clarity and transparency of the existing exemption, SEAC advised that the duration of the exemptions granted by Member States for the placing on the market of diaphragms and fibres should be limited to the end of 2017 and concluded that the proposed amendment of the existing restriction, as modified by SEAC, is the most appropriate Union wide measure.

(9) Commission Implementing Decision 2013/732/EU[(3)], establishing the best available techniques (BAT) conclusions under Directive 2010/75/EU of the European Parliament and of the Council[(4)] on industrial emissions (IED), stipulates that the use of asbestos diaphragms is not considered BAT and accordingly permit conditions for chlor-alkali installations operated in the Union must be updated by 12 December 2017 so that those installations do no longer use asbestos diaphragms from that date. However, unlike for mercury cells which are not considered BAT under any circumstances, Member States may determine that, in specific and exceptional circumstances, asbestos diaphragms may be used in a particular installation for a well-defined longer period and under conditions consistent with the environmental objectives of the IED, provided that the conditions and duration of such use are specified in a legally binding way.

(10) Since the adoption of the SEAC opinion, the operator of the plant in which full substitution is envisaged by 2025 has entered into a binding agreement with the

authorities of the Member State concerned with a view to guaranteeing the gradual substitution of diaphragms containing chrysotile by a non-asbestos alternative material from 2014 on and achieving full substitution at the latest by 30 June 2025. Therefore it is appropriate that the duration of the exemption granted by Member States to permit the use of diaphragms containing chrysotile and of chrysotile fibres used exclusively in their maintenance is limited to 30 June 2025 at the latest.

(11) Moreover, although under the binding agreement the operator undertook to stop importing chrysotile fibres and diaphragms containing chrysotile by the end of 2017, it subsequently confirmed that imports have already ceased as it has acquired sufficient chrysotile fibres to manage the transition to an alternative material. Therefore it is appropriate to terminate the possibility that allows Member States to permit the placing on the market of diaphragms containing chrysotile and of chrysotile fibres exclusively for their maintenance.

(12) A report indicating the amount of chrysotile used in diaphragms in the installations benefiting from exemptions should be transmitted to the Commission. Union legislation on the protection of workers' health and safety already provides that employers must reduce workers' exposure to chrysotile fibres to a minimum and in any case below an established limit value. Member States may set more stringent limit values for such fibres in air and may require their regular measurement/monitoring. The results of any such measurement/monitoring should be included in the report.

(13) The Forum for Exchange of Information on Enforcement was consulted and its recommendations were taken into account.

(14) Regulation (EC) No 1907/2006 should therefore be amended accordingly.

(15) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

HAS ADOPTED THIS REGULATION:

Article 1

Annex XVII to Regulation (EC) No 1907/2006 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.