Regulation (EU) No 259/2012 of the European Parliament and of the Council of 14 March 2012 amending Regulation (EC) No 648/2004 as regards the use of phosphates and other phosphorus compounds in consumer laundry detergents and consumer automatic dishwasher detergents (Text with EEA relevance)

REGULATION (EU) No 259/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 14 March 2012

amending Regulation (EC) No 648/2004 as regards the use of phosphates and other phosphorus compounds in consumer laundry detergents and consumer automatic dishwasher detergents

(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 Committee[(1)],

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

Whereas:

(1) In its Report of 4 May 2007 to the Council and the European Parliament, the Commission evaluated, pursuant to Regulation (EC) No 648/2004 of the European Parliament and of the Council[(3)], 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 phosphorus 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 REACH[(4)] system should therefore, where appropriate, be used to evaluate such substances.

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 259/2012 of the European Parliament and of the Council. (See end of Document for details)*

(3) The interaction between phosphates and other phosphorus 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 phosphorus compounds in order to preclude a mere substitution of other phosphorus 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 phosphorus 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, 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 phosphorus compounds in consumer laundry detergents and consumer automatic dishwasher detergents.,

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU) No 259/2012 of the European Parliament and of the Council. (See end of Document for details)*

(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 phosphorus compounds

Detergents listed in Annex VIa that do not comply with the limitations on the content of phosphates and of other phosphorus 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 section B of Annex VII.;

(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 5 years from 19 April 2012. By 19 July 2016, 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 5 years, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each such period.

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 2 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 2 months at the initiative of the European Parliament or the Council.