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From:	General Secretariat of the Council
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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Annexes IV and V to Regulation (EU) 2019/1021 of the European Parliament and of the Council on persistent organic pollutants - Presidency compromise text

With a view to the meeting of the Working Party on the Environment on 4 March 2022, delegations will find in the Annex a Presidency compromise text on the above.

The Commission proposal (doc. 13349/2021 + ADD 1) was presented at the informal videoconference of the members of the Working Party on Environment on 22 November 2021. The Working Party on Environment examined the proposal at its meetings on 6 and 26 January and 9 and 11 February 2022. The present compromise text has been prepared in light of delegations' comments at the abovementioned meetings, as well as of written comments received.

New text compared to the Commission proposal is marked in **bold and underlined**, deleted text in ~~strikethrough~~.

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

**amending Annexes IV and V to Regulation (EU) 2019/1021 of the European Parliament and
of the Council on persistent organic pollutants**

(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 Committee¹,

Having regard to the opinion of the Committee of the Regions²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² OJ C , , p. .

Whereas:

- (1) Regulation (EU) 2019/1021 of the European Parliament and of the Council³ on persistent organic pollutants implements ~~in the law of the~~ **at** Union **level** the commitments set out in the Stockholm Convention on Persistent Organic Pollutants (hereinafter ‘the Convention’) approved on behalf of the Community by Council Decision 2006/507/EC⁴, and in the Protocol to the 1979 Convention on Long-Range Transboundary Air Pollution on Persistent Organic Pollutants approved on behalf of the Community by Council Decision 2004/259/EC⁵.
- (2) At the seventh meeting of the Conference of the Parties to the Convention, held from 4 to 15 May 2015, it was agreed to include pentachlorophenol, its salts and esters (‘pentachlorophenol’) in Annex A to the Convention. At the ninth meeting of the Conference of the Parties to the Convention, held from 29 April to 10 May 2019, it was agreed to include dicofol as well as perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds in Annex A to the Convention. In view of those amendments to the Convention and to ensure that waste containing those substances is managed in accordance with the provisions of the Convention, it is necessary to also amend Annexes IV and V to Regulation (EU) 2019/1021 by including pentachlorophenol, dicofol and perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds in the Annexes and indicating their corresponding concentration limits.

³ Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (recast) (OJ L 169, 25.6.2019, p. 45).

⁴ Council Decision 2006/507/EC of 14 October 2004 concerning the conclusion, on behalf of the European Community, of the Stockholm Convention on Persistent Organic Pollutants (OJ L 209, 31.7.2006, p. 1).

⁵ Council Decision 259/2004/EC of 19 February 2004 concerning the conclusion, on behalf of the European Community, of the Protocol to the 1979 Convention on Long Range Transboundary Air Pollution on Persistent Organic Pollutants (OJ L 81, 19.03.2004, p. 35).

- (3) Pentachlorophenol had been previously listed in Annexes IV and V to Regulation (EC) No 850/2004 of the European Parliament and of the Council⁶ by Commission Regulation (EU) 2019/636⁷, with an Annex IV value of 100 mg/kg and an Annex V value of 1 000 mg/kg. Regulation (EC) No 850/2004 was repealed by Regulation (EU) 2019/1021, but pentachlorophenol was unintentionally omitted from that Regulation. It is therefore necessary to amend Annexes IV and V to Regulation (EU) 2019/1021 to include pentachlorophenol.
- (4) Annexes IV and V to Regulation (EU) 2019/1021 already contain concentration limits for the following substances or substance groups: a) the sum of the concentrations of tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether (with the exception of the latter, which is not listed in Annex V to that Regulation); b) Hexabromocyclododecane; c) Alkanes C10-C13, chloro (short-chain chlorinated paraffins) (SCCPs); and d) Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF). Pursuant to Article 15(2) of Regulation (EU) 2019/1021, it is appropriate to amend the concentration limits in Annex IV for those substances to adapt their limit values to scientific and technical progress. To be consistent with the list of polybrominated diphenyl ethers (PBDEs) listed in Annex IV to Regulation (EU) 2019/1021, the substance decabromodiphenyl ether should be included among the PBDEs listed in the third column of Annex V to that Regulation.

⁶ Regulation (EC) No 850/2004 of the European Parliament and of the Council of 29 April 2004 on persistent organic pollutants and amending Directive 79/117/EEC (OJ L 158, 30.4.2004, p. 7).

⁷ Commission Regulation (EU) 2019/636 of 23 April 2019 amending Annexes IV and V to Regulation (EC) No 850/2004 of the European Parliament and of the Council on persistent organic pollutants (OJ L 109, 24.4.2019, p. 6).

- (4a) Concerning polybrominated diphenyl ethers (PBDEs) listed in Regulation (EU) 2019/1021, the concentration limit for the sum of those substances in waste should be set at 500mg/kg. Taking due account of the declining concentrations of PBDEs in certain waste, resulting from existing limitations on the placing on the market and use of PBDEs, and in light of the possible evolution of relevant sorting and analytical methods, the Commission should review that concentration limit and, where appropriate, adopt a legislative proposal to lower that value.**
- (5) Considering that a subgroup of 12 PCB congeners⁸, known as dioxin-like PCBs (dl-PCBs), have toxicological properties that closely resemble those of PCDD/PCDF, and to take into account the aggregated effect of all dioxin-like compounds listed in Regulation (EU) 2019/1021, it is appropriate to include dl-PCBs within the existing group entry for PCDD/PCDF in Annexes IV and V to Regulation (EU) 2019/1021. The list of toxic equivalency factor values in Part 2 of Annex V to that Regulation should also be amended to introduce the corresponding values for the individual dl-PCB congeners.
- (6) The proposed concentration limits in Annexes IV and V to Regulation (EU) 2019/1021 have been set applying the same methodology that was used to establish the concentration limits in previous amendments of Annexes IV and V to Regulation (EC) No 850/2004. The proposed concentration limits should achieve the objective of a high level of protection of human health and the environment associated to the destruction or irreversible transformation of the substances concerned. Those limits should also take into consideration the broader policy objective of achieving a climate-neutral and circular economy, enshrined in the European Green Deal⁹.
- (7) Regulation (EU) 2019/1021 should therefore be amended accordingly.

⁸ PCB-77, PCB-81, PCB-105, PCB-114, PCB-118, PCB-123, PCB-126, PCB-156, PCB-157, PCB-167, PCB-169 and PCB 189.

⁹ COM(2019) 640 final

(8) It is appropriate to provide for a sufficient period of time to allow companies and competent authorities to adapt to the new requirements.

(9a) Since the objective of this Regulation, namely to protect the environment and human health from persistent organic pollutants, cannot be sufficiently achieved by the Member States, owing to the transboundary effects of those pollutants, but can rather be better achieved at Union level, 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 that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Annexes IV and V to Regulation (EU) 2019/1021 are 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 apply from [*OP, please introduce the date of 6 months after 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 Brussels,

For the European Parliament
The President

For the Council
The President

ANNEX

Annexes IV and V are amended as follows:

(1) Annex IV is amended as follows:

(a) the following rows are added to the table:

‘Pentachlorophenol, its salts and esters	87-86-5 and others	201-778-6 and others	100 mg/kg
Dicofol	115-32-2	204-082-0	50 mg/kg
Perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds, <u>as set out in Annex I</u>	335-67-1 and others	206-397-9 and others	1 mg/kg (PFOA and its salts), 40 mg/kg (<u>sum of</u> PFOA-related compounds)’

(b) the row for the substance Alkanes C₁₀-C₁₃, chloro (short-chain chlorinated paraffins) (SCCPs) is replaced by the following:

‘Alkanes C ₁₀ -C ₁₃ , chloro (short-chain chlorinated paraffins) (SCCPs)	85535-84-8	287-476-5	1 500 mg/kg’
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(c) the rows for the substances Tetrabromodiphenyl ether C₁₂H₆Br₄O, Pentabromodiphenyl ether C₁₂H₅Br₅O, Hexabromodiphenyl ether C₁₂H₄Br₆O, Heptabromodiphenyl ether C₁₂H₃Br₇O and Decabromodiphenyl ether C₁₂Br₁₀O are replaced by the following:

'Tetrabromodiphenyl ether C ₁₂ H ₆ Br ₄ O	40088- 47-9 and others	254- 787-2 and others		Sum of the concentrations of tetrabromodiphenyl ether, pentabromodiphenyl ether, hexabromodiphenyl ether, heptabromodiphenyl ether and decabromodiphenyl ether:
Pentabromodiphenyl ether C ₁₂ H ₅ Br ₅ O	32534- 81-9 and others	251- 084-2 and others		
Hexabromodiphenyl ether C ₁₂ H ₄ Br ₆ O	36483- 60-0 and others	253- 058-6 and others		
Heptabromodiphenyl ether C ₁₂ H ₃ Br ₇ O	68928- 80-3 and others	273- 031-2 and others		
Bis(pentabromophenyl) ether (decabromodiphenyl ether; decaBDE) C ₁₂ Br ₁₀ O	1163-19- 5 and others	214- 604-9 and others		
				<p>(a) until [OP, please introduce the date of the day before the date in the following point], 500 mg/kg</p> <p>(b) from [OP, please introduce the date of 5 years after the date of entry into force of this Regulation], 200 mg/kg or, if higher, the sum of the concentration of those substances where they are present in mixtures</p>

			<p>or articles, as set out in Annex I, fourth column, point 2 for the substances</p> <p>tetrabromodiphenyl ether,</p> <p>pentabromodiphenyl ether,</p> <p>hexabromodiphenyl ether,</p> <p>heptabromodiphenyl ether and</p> <p>decabromodiphenyl ether.²</p> <p><u>The Commission shall review that concentration limit and shall, where appropriate and in accordance with the Treaties, adopt a legislative proposal to lower that value to a value no higher than 200 mg/kg not later than [OP, please introduce the date of 7 years after the date of entry into force of this Regulation].</u></p>
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(d) the row for the substances Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF) is replaced by the following:

‘Polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD/PCDF) and dioxin-like polychlorinated biphenyls (dl-PCBs)			10 µg/kg ⁽²⁾
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(2) The limit is calculated as the sum of PCDD, PCDF and dl-PCBs according to the toxic equivalency factors (TEFs) set out in Part 2, in the third subparagraph, in the table, of Annex V.’

(e) the row for the substance hexabromocyclododecane is replaced by the following:

‘Hexabromocyclododecane ⁽⁴⁾	25637-99-4, 3194-55-6, 134237-50-6, 134237-51-7, 134237-52-8	247-148-4 221-695-9	500 mg/kg’
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(2) Part 2 of Annex V is amended as follows:

(a) in the second paragraph, the first column of the table, ‘Wastes as classified in Decision 2000/532/EC’, is amended as follows:

(i) the following text is inserted after ‘10.1 Wastes from power stations and other combustion plants (except 19)’:

10 01 03 : fly ash from peat and untreated wood

(ii) the following text is inserted after '19 04 03* Non-vitrified solid waste':

20 MUNICIPAL WASTES (HOUSEHOLD WASTE AND SIMILAR COMMERCIAL, INDUSTRIAL AND INSTITUTIONAL WASTES) INCLUDING SEPARATELY COLLECTED FRACTIONS

20 01 : separately collected fractions (except 15 01)

20 01 41 : wastes from chimney sweeping

(b)(a) in the second paragraph, the second column of the table, 'Maximum concentration limits of substances listed in Annex IV', is amended as follows:

- (i) the text 'Polychlorinated dibenzo-p-dioxins and dibenzofurans: 5 mg/kg;' is replaced by the following:

'Polychlorinated dibenzo-p-dioxins and dibenzofurans and dioxin-like polychlorinated biphenyls (dl-PCBs): 5 mg/kg;';

- (ii) the text 'Sum of the concentrations of tetrabromodiphenyl ether (C₁₂H₆Br₄O), pentabromodiphenyl ether (C₁₂H₅Br₅O), hexabromodiphenyl ether (C₁₂H₄Br₆O) and heptabromodiphenyl ether (C₁₂H₃Br₇O): 10 000 mg/kg;' is replaced by the following:

'Sum of the concentrations of tetrabromodiphenyl ether (C₁₂H₆Br₄O), pentabromodiphenyl ether (C₁₂H₅Br₅O), hexabromodiphenyl ether (C₁₂H₄Br₆O), heptabromodiphenyl ether (C₁₂H₃Br₇O) and decabromodiphenyl ether (C₁₂Br₁₀O): 10 000 mg/kg;';

(iii) the following text is inserted after ‘Toxaphene: 5 000 mg/kg.’:

‘Pentachlorophenol, its salts and esters: 1 000 mg/kg;

Dicofol: 5 000 mg/kg;

Perfluorooctanoic acid (PFOA), its salts and PFOA-related compounds: 50 mg/kg
(PFOA and its salts), 2 000 mg/kg (PFOA-related compounds).’.

(c) ~~(b)~~ the third paragraph is replaced by the following:

‘The maximum concentration limit of polychlorinated dibenzo-p-dioxins and dibenzofurans (PCDD and PCDF) and dioxin-like polychlorinated biphenyls (dl-PCBs) shall be calculated according to the following toxic equivalency factors (TEFs):

Toxicity equivalency factors (TEFs) for PCDD, PCDF and dl-PCBs

PCDD	TEF
2,3,7,8-TeCDD	1
1,2,3,7,8-PeCDD	1
1,2,3,4,7,8-HxCDD	0,1
1,2,3,6,7,8-HxCDD	0,1
1,2,3,7,8,9-HxCDD	0,1
1,2,3,4,6,7,8-HpCDD	0,01
OCDD	0,0003
PCDF	TEF
2,3,7,8-TeCDF	0,1
1,2,3,7,8-PeCDF	0,03
2,3,4,7,8-PeCDF	0,3

1,2,3,4,7,8-HxCDF	0,1
1,2,3,6,7,8-HxCDF	0,1
1,2,3,7,8,9-HxCDF	0,1
2,3,4,6,7,8-HxCDF	0,1
1,2,3,4,6,7,8-HpCDF	0,01
1,2,3,4,7,8,9-HpCDF	0,01
OCDF	0,0003
dl-PCBs	TEF
PCB 77	0,0001
PCB 81	0,0003
PCB 105	0,00003
PCB 114	0,00003
PCB 118	0,00003
PCB 123	0,00003
PCB 126	0,1
PCB 169	0,03

PCB 156	0,00003
PCB 157	0,00003
PCB 167	0,00003
PCB 189	0,00003

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