

QUESTIONS & ANSWERS

Regulation (EU) 2019/1021 on Persistent Organic Pollutants (POPs Regulation)

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This Q&As should be read in combination with the document '[Implementation of Article 4\(2\) of the POPs Regulation](#)' presented in the 30th meeting of the Competent Authorities for Regulation (EU) 2019/1021 on Persistent Organic Pollutants (hereinafter referred to as 'the Document on the implementation of Article 4(2)')

Article 4(2) POPs Regulation

Paragraph 2 of Article 4 lays down an exemption for a substance present in '*articles produced*' and an exemption for a substance present in '*articles already in use*', before or on the date that the POPs Regulation becomes applicable to that substance:

First subparagraph: "*For a substance added to Annex I or II after 15 July 2019, Article 3 shall not apply for a six-month period if that substance is present in **articles produced** before or on the date that this Regulation becomes applicable to that substance*".

Second subparagraph: "*Article 3 shall not apply in the case of a substance present in **articles already in use** before or on the date that this Regulation or Regulation (EC) No 850/2004 became applicable to that substance, whichever date came first.*"

| Before application of POPs Regulation to substance | After application of POPs Regulation to substance | |
|--|---|--|
| | Article allowed to be placed further on the market? | Article allowed to be used? |
| Article produced in EU; not yet in use | Yes, but only for 6 months | Yes, indefinitely if it reaches the final user within the 6 months |
| Article produced in EU; already in use | Yes, indefinitely | Yes, indefinitely |
| Article produced in non-EU; not yet imported | No, import is not allowed | No, as import is not allowed |
| Article imported; not yet in use | Yes, but only for 6 months | Yes, indefinitely if it reaches the final user within the 6 months |
| Article imported; already in use | Yes, indefinitely | Yes, indefinitely |

1. What date is ‘the date’ that Regulation (EU) 2019/1021 (POPs Regulation) ‘becomes applicable to a substance’ referred to in Article 4(2)?

Article 4(2) first subparagraph:

The exemption laid down in Article 4(2) first subparagraph only applies to substances listed in Annex I or Annex II to the POPs Regulation after 15 July 2019 (i.e. after the entry into force of Regulation (EU) 2019/1021). The date that the Regulation becomes applicable to such a substance is the date from which the inclusion of the substance in Annex I or Annex II is applicable. For some substances, the legal act that has listed the substance in Annex I to the POPs Regulation specifies the date of application of that listing. For instance, PFOA was listed in Annex I to the POPs Regulation by [Commission Delegated Regulation \(EU\) 2020/784](#). Article 2 of that act specifies that it applies from 4 July 2020. Therefore, 4 July 2020 is the date that the POPs Regulation became applicable to PFOA referred to in Article 4(2) of the POPs Regulation.

Other legal acts listing a substance in Annex I do not specify a date of application. In that case, the date of entry into force of that act is the date that the POPs Regulation becomes applicable to the substance listed. For instance, PFHxS was included in Annex I by Commission [Delegated Regulation \(EU\) 2023/1608](#). That legal act does not specify a date of application. It entered into force on 28 August 2023 (i.e. the twentieth day following that of its publication in the OJCE). Therefore, 28 August 2023 is the date that the POPs Regulation became applicable to PFHxS.

Article 4(2) second subparagraph:

As explained above, for substances included in Annex I or II after 15 July 2019, the date that the POPs Regulation became applicable to that substance is the date from which the inclusion of the substance in Annex I or Annex II is applicable.

Some substances were included in Annex I or II to Regulation (EU) 2019/1021 at the time of entry into force of that Regulation. Some of those substances were included in Annex I or II because they had already been added to the previous Regulation (EC) 850/2004 (e.g. XX); the other substances were newly listed in the Regulation (e.g. DecaBDE). The date of application of Regulation (EU) 2019/1021 to all those substances is 15 July 2019, date of entry into force of the new Regulation.

However, for substances that had already been listed in Regulation (EC) 850/2004, the relevant date is the date of application of Regulation (EC) 850/2004 to the substance, as it is earlier than 15 July 2019.

For example, the substance Hexabromodiphenyl ether was added to Annex I to Regulation (EC) 850/2004 by Commission Regulation (EU) 757/2010. Article 2 of Commission Regulation

(EU) 757/2010 states that the date of application is 26 August 2010. As the date that Regulation 850/2004 became applicable to Hexabromodiphenyl ether is earlier than 15 July 2019, 26 August of 2010 is the relevant date Hexabromodiphenyl ether for the purpose of the application of the exemption in Article 4(2) second subparagraph.

2. Can articles containing a substance listed in Annex I to the POPs Regulation that were produced in non-EU countries before or on the date that the POPs Regulation became applicable to that substance be imported during the 6 months period provided for in Article 4(2) first subparagraph?

No.

Note (ii) to Annexes A and B to the Stockholm Convention states:

“This note shall not be considered as a production and use specific exemption for purposes of paragraph 2 of Article 3. Quantities of a chemical occurring as constituents of articles manufactured or already in use before or on the date of entry into force of the relevant obligation with respect to that chemical, shall not be considered as listed in this Annex, provided that a Party has notified the Secretariat that a particular type of article remains in use within that Party. The Secretariat shall make such notifications publicly available”.

In view of that note, the Commission services consider that the exemptions in Article 4(2) of the POPs Regulation are limited to the territory of the respective Party, i.e. the European Union and Member States, and that this should be interpreted as not allowing import from non-EU countries of articles containing restricted substances during that 6-months period. Consequently, the exemption only applies to articles that are in the Union before or on the date that the POPs Regulation became applicable to the substance.

3. Can articles containing a substance listed in Annex I that were imported in the Union before or on the date that the POPs Regulation became applicable to that substance, be further placed on the market in the Union after that date?

Articles imported before or on the date that the POPs Regulation became applicable to the substance that were not in use in the Union by that date, can be further placed on the market in the Union for a period of up to 6 months after the POPs Regulation became applicable to that substance.

Articles imported before or on the date that the POPs Regulation became applicable to the substance and that are considered already in use in the EU before or on that date, can be further placed on the market for an indefinite period.

See also the document on the [Implementation of Article 4\(2\)](#) in relation to when an article is considered to be ‘in use’.

- 4. If an article containing a substance listed in Annex I and produced but not already in use before or on the date that the POPs Regulation became applicable to that substance is supplied to a final user (professional or consumer) during the 6 months following the date on which the POPs Regulation became applicable to that substance, can that final user continue to use the article after the expiration of those 6 months?**

Yes.

- 5. If an article containing a substance listed in Annex I was in use in a non-EU country before the date on which the POPs Regulation became applicable to the substance, is it covered by the exemption in Article 4(2) second subparagraph and can it be imported in the Union after the date on which the POPs Regulation became applicable to the substance?**

No. In view of Notes (ii) to Annexes A and B to the Stockholm Convention, the Commission services consider that the exemptions in Article 4(2) of the POPs Regulation are limited to the territory of the respective party to the Convention, and that this should be interpreted as not allowing import from non-EU countries of articles containing restricted substances after the POPs Regulation became applicable to that substance. See also question No 2.

Complex products composed of an assembly of articles

- 6. ¹Case of a complex product composed of several articles where one or more of those articles contain a substance listed in Annex I. E.g. ‘scissors’ are complex products composed of two blades and a screw, where each blade and the screw are individual articles.**

Can the complex product (scissors) be placed on the market after the date on which the POPs Regulation becomes applicable to the substance?

As explained in the [Document on the implementation of Article 4\(2\)](#), once an assembly process of an article into a complex product has started, that article is considered as an article ‘in use’ for the purpose of Article 4(2) second sub-paragraph. Therefore, if before or on the date that the POPs Regulation became applicable to the substance the complex product was already assembled or the assembly process of the article into the complex product had already started,

¹ [This document has been discussed in the meeting of the Competent Authorities. All Member States but one agree to this reply].

the article containing the POP substance is considered an article in 'use'. It is covered by the exemption in Article 4(2) second subparagraph and can be placed on the market as part of the complex product after the date that the POPs regulation became applicable to the substance, without any time restriction. However, this exemption does not cover imports of complex products. See also questions No 2 and 5 as regards imports of articles or complex products.

However, if the assembly process of the article has not yet started before or on the date that the POPs Regulation became applicable to the substance, the article cannot be considered as an article 'in use' and therefore it can only be further placed on the market, on its own or as part of a complex product assembled after that date, during the 6 months provided in Article 4(2) first subparagraph.

7. ²If a complex product composed of one or more articles containing a substance listed in Annex I is imported in the EU before or on the date on which the POPs Regulation became applicable to the substance, is it covered by the exemption in Article 4(2) second subparagraph?

Yes. As explained in the [Document on the implementation of Article 4\(2\)](#), if before or on the date that the POPs Regulation became applicable to the substance an article containing a POPs substance is already assembled in a complex product, the article containing the POP substance is considered as an article in 'use'. If the assembly takes place in a non-EU country and the complex product is imported in the EU before or on the date that the POPs Regulation becomes applicable to the substance, the article containing the POPs substance is considered as an articles 'in use' in the EU and it is covered by the exemption in Article 4(2) second subparagraph.

See also questions 2 and 5.

Articles produced within a time limited exemption laid down in Annex I to the POPs Regulation

8. Do exemptions in Article 4(2) of the POPs Regulation apply to articles produced within the timeframe of a specific exemption laid down in Annex I?

No. The exemptions in Article 4(2) apply to articles 'produced' or to articles 'in use' before or on the date that the Regulation became applicable to the substance.

The date that the POPs Regulation became applicable to the substance is the date of application of the listing of the substance in Annex I or II (see question No.0). An article produced during the timeframe of a specific exemption laid down in Annex I is necessarily produced after the

² [This document has been discussed in the meeting of the Competent Authorities. All Member States but one agree to this reply].

date that the Regulation became applicable to the substance and cannot have been ‘produced’ or ‘in use’ before or on that date. Therefore, such an article cannot comply with the conditions to be covered by the exemptions in Article 4(2).

There is no difference if the case concerns a single article (e.g. a screw) or an article assembled in a complex product (e.g. a screw in a scissor). In both cases the article in question (screw) was produced after the date on which the POPs Regulation became applicable to the substance and therefore it is not covered by the exemptions in Article 4(2).

Such articles are subject to the rules laid down in that Annex.

For example, as regards PFOA, the date on which the POPs Regulation became applicable to that substance is 4 July 2020 (included in Annex I by Commission Delegated Regulation (EU) 2020/784). Paragraph 5(c) of the PFOA entry in Annex I states that:

“By way of derogation, the manufacturing, placing on the market and use of PFOA, its salts and PFOA-related compounds shall be allowed for the following purposes: (...)

(c) textiles for oil- and water-repellency for the protection of workers from dangerous liquids that comprise risks to their health and safety, until 4 July 2023;”

Therefore, a textile article containing PFOA produced within the time frame of that specific exemption (e.g. in May 2023) can be placed on the market until 4 July 2023. There is no difference between a single article and an article that is assembled with other articles in a complex product (e.g. a jacket). It is not an ‘article produced’ before the POPs Regulation became applicable to PFOA in the terms of Article 4(2) first subparagraph and the 6 months period referred to there does not apply.

Similarly, even if such an article reaches and is used by the final user before the expiry of the specific exemption (e.g. in June 2023) it cannot be considered as an article ‘in use’ in the terms of Article 4(2) second subparagraph and therefore, the exemption in that Article does not apply.