



EU Environment Report

September/October 2013

CHEMICALS

Biocides Regulation enters into force

On 1 September 2013, Regulation 528/2012, which concerns the making available on the market and use of biocidal products, entered into force. The Regulation aims to improve the harmonisation of the rules on the making available on the market and the use of biocidal products and applies to both biocidal products and treated articles, defined as articles with a primary biocidal function. A list of the types of biocidal products covered by the Regulation – 22 product types in total – is set out in Annex V to the Regulation. The Regulation lays down rules in relation to the following:

- The establishment at EU level of a list of active substances which may be used in biocidal products;
- The authorisation of biocidal products on both the Member State and EU level;
- The mutual recognition of authorisations within the EU;
- The making available on the market and the use of biocidal products within one or more Member States or the EU;
- The placing on the market of treated articles.

The Regulation also puts in place a new version of the Register for Biocidal Products, which aims to facilitate the exchange of information between Member State authorities, the ECHA and the Commission, and through which applications for all procedures under the Regulation are submitted and approvals are published.

The full text of the Biocides Product Regulation can be accessed via the following link: <http://echa.europa.eu/regulations/biocidal-products-regulation/legislation>.

Germany authorised to maintain national limit value on certain chemicals

On 7 October 2013, the European Commission (“Commission”) issued a decision authorising Germany to maintain the limit values under German law of five chemical substances: lead, arsenic, mercury, barium and antimony. According to Article 55 of Directive 2009/48/EC on the safety of toys, Member States had to bring into force certain migration limits for 19 elements, including lead, arsenic, mercury, barium and antimony, by 20 July 2013, as specified in Part III of Annex II to the Directive. On 20 January 2011, Germany requested the Commission under Article 114 TFEU for permission to maintain its limit values under national law. On 1 March 2012, the Commission rejected this request in relation to arsenic, antimony and mercury and partially approved the request until 20 July 2013 in relation to lead and barium. On 14 May 2012, Germany appealed against this Commission decision. On 13 February 2013, it applied for interim relief requesting the provisional approval of the national provisions maintaining the limit values for antimony, arsenic, barium, lead and mercury, pending the Court’s decision in the

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main action, which was granted by Order of the President of the General Court of 15 May 2013. The Commission decision of 7 October 2013 is in compliance with that Order. The Commission is now appealing the Order of the President of the General Court.

This newsletter briefly describes EU environment developments.

Due to the general nature of its content, this newsletter is not and should not be regarded as legal advice.

The full text of the Commission Decision can be accessed via the following link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:267:0007:0008:EN:PDF>

Commission proposes to amend the definition of nanomaterials under food information legislation

On 11 September 2013, the Commission published a draft Regulation amending Regulation 1169/2011 on the provision of food information to consumers as regards the definition of “engineered nanomaterials”. The draft Delegated Regulation aims to bring the definition of “engineered nanomaterials” in line with that laid down in Commission Recommendation 2011/696/EU. Accordingly, the draft Delegated Regulation proposes the following definition of “engineered nanomaterials”: *“any intentionally manufactured material, containing particles, in an unbound state or as an aggregate or as an agglomerate and where, for 50% or more of the particles in the number size distribution, one or more external dimensions is in the size range 1nm to 100nm”*.

However, food additives which are covered by the definition and referred to in the Union list in Article 4 of the Regulation are not considered as “engineered nanomaterials”, whereas fullerenes, graphene flakes and single wall carbon nanotubes with one or more external dimensions below 1 nm are considered as “engineered nanomaterials”.

According to the Regulation on food information, all ingredients present in the form of engineered nanomaterials must be clearly indicated in the list of ingredients and the names of such ingredients must be followed by the word “nano” in brackets.

The full text of the draft Delegated Regulation can be accessed via the following link:

http://ec.europa.eu/enterprise/tbt/tbt_repository/EU144_EN_1_1.pdf

Parliament amends Commission’s proposal on medical devices

On 22 October 2013, the European Parliament (“Parliament”) adopted amendments to the Commission’s proposal for a Regulation on medical devices, which amends Directive 2001/83/EC, Regulation (EC) No 178/2002 and Regulation (EC) No 1223/2009. The proposed Regulation purports to prohibit the use of phthalates in medical devices from January 2020. In addition, substances that are carcinogenic, mutagenic or toxic to the reproductive system or that disrupt the endocrine system would be phased out within 8 years following the adoption of the Regulation, if safer alternatives are available. The Parliament’s amended proposal also provides for a strict pre-market authorisation test for medical devices that intentionally release nanomaterials into the body of the patient. This falls short of the wider scope in the Commission’s previous proposal which covered all devices making use of nanomaterials.

The Parliament’s procedure file in relation to the proposed Regulation can be accessed via the following link:

[http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0266\(COD\)&l=en](http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0266(COD)&l=en)

CLIMATE CHANGE

Commission plans to re-apply ETS to EEA airspace

On 16 October 2013, the Commission proposed amending Directive 2003/87/EC, which lays down the legal foundations for the EU Emissions Trading Scheme (“EU

ETS”), to cover only the part of a flight that takes place within EEA airspace. This reverses a temporary exemption for flights operated in 2010, 2011 and 2012 from or to non-European countries, which was decided in April 2013. The proposal is said to be an interim measure pending the establishment of a global market-based mechanism addressing international aviation emissions within the framework of the International Civil Aviation Organisation (“ICAO”), which was agreed by the ICAO Assembly in Montreal on 3 October 2013. If the proposal is approved by the European Parliament and Council, from 1 January 2014, emissions from flights within the EEA and, for flights to and from countries outside the EEA, the emissions from the proportion of the flight taking place within EEA airspace, would be covered by the ETS system. Flights between the EEA and least-developed countries, low-income countries and lower-middle income countries which benefit from the EU’s Generalised System of Preferences and have a share of less than 1% of international aviation activity would be fully exempted from the EU ETS. This proposal has been controversial and has elicited criticism from non-EU countries, such as India and China.

The full text of the Commission’s proposal can be accessed via the following link:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0722:FIN:EN:PDF>

ECO-DESIGN

EC consults on energy labelling and eco-design rules

On 31 August 2013, the Commission launched a public consultation on the planned review of the Energy Labelling Directive 2010/30/EU and the Ecodesign Directive 2009/125/EC. Among other things, the Commission is seeking comments on the introduction of new energy classes to reflect developments in product design and how the display of information on labels can be improved, in particular whether additional data such as products’ life expectancy should be included on the label. To tackle non-compliance issues, the Commission suggests a number of options including the creation of an EU-wide market surveillance authority or of a mandatory product database. With regard to the review of the Ecodesign Directive, one of the questions is whether its scope should be extended to non-energy related products. Comments may be submitted until 30 November 2013.

Further details in relation to the consultation are available via the following link:

http://ec.europa.eu/energy/efficiency/consultations/201310_evaluation_of_energy_labelling_directive_en.htm

Regulations on eco-design and energy labelling of space heaters and water heaters published

On 6 September 2013, Regulations in relation to the ecodesign and energy labelling of space heaters and water heaters were published in the EU’s Official Journal. The preparatory studies for these product groups had already been finished in 2007. EU officials, Member States and stakeholders have long struggled to find a compromise for the regulation of the energy efficiency and other parameters of these products.

As regards space heaters, Regulation 813/2013 establishes ecodesign requirements for the placing on the market and/or putting into service of space heaters and combination heaters with a rated heat output ≤ 400 kW. In addition, Delegated Regulation 811/2013 establishes requirements for the energy labelling of, and the provision of supplementary product information on, space heaters and combination heaters with a rated heat output ≤ 70 kW, packages of space heater ≤ 70 kW, temperature control and solar device and packages of combination heater ≤ 70 kW, temperature control and solar device.

As regards water heaters, Regulation 814/2013 establishes the ecodesign requirements for the placing on the market and/or putting into service of water

heaters with a rated heat output \leq 400 kW and hot water storage tanks with a storage volume \leq 2 000 litres, including those integrated in packages of water heater and solar device. In addition, Delegated Regulation 812/2013 establishes the requirements for the energy labelling of, and the provision of supplementary product information on, water heaters with a rated heat output \leq 70 kW, hot water storage tanks with a storage volume \leq 500 litres and packages of water heater \leq 70 kW and solar device.

The full text of the above Regulations can be accessed via the following links:
<http://eur-lex.europa.eu/JOHtml.do?uri=OJ:L:2013:239:SOM:EN:HTML>

ENERGY

Parliament proposes that future “fracking” activities be subject to EIAs

On 9 October 2013, the Parliament voted that future “fracking” activities – the exploration and hydraulic fracturing extraction for non-conventional hydrocarbons – will require mandatory environmental impact assessments (EIAs). This represents a departure from the Commission’s proposed amendment to Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment. Currently, Directive 2011/92/EU requires EIAs for natural gas projects that extract at least 500,000 cubic metres each day. The Parliament’s proposal would introduce a mandatory requirement that an EIA must be carried out for all exploration and exploitation of non-conventional hydrocarbons, irrespective of the quantity extracted. The Parliament’s proposal also includes measures which aim to prevent conflicts of interest between developers and experts carrying out EIAs. Such experts must have the necessary qualifications, experience and technical skills and must be able to work in a scientifically objective manner, independently of the developer and public authorities.

The Parliament’s press release can be accessed via the following link:
<http://www.europarl.europa.eu/news/en/news-room/content/20131004IPR21541/html/Shale-gas-new-fracking-projects-must-pass-environmental-test>

Commission grants priority treatment to 250 Projects of Common Interest (PCIs) in energy sector

On 14 October 2013, the Commission published a list of 250 projects of common interest (PCIs), which will benefit from accelerated licensing procedures, improved regulatory conditions and access to EU financial support from the €5.85 billion budget allocated for the period 2014-20 under the Connecting Europe Facility. These benefits will help the PCIs to be implemented faster and will make them more attractive to investors. PCIs included on the list must have significant benefits for at least two Member States, contribute to market integration and further competition, enhance security of supply and reduce CO₂ emissions. The list will be updated every two years with the aim of integrating newly needed projects and removing obsolete ones. Member States and MEPs have 2 months to scrutinise the list.

The Commission’s press release giving further details in relation to this development can be accessed via the following link:
http://europa.eu/rapid/press-release_IP-13-932_en.htm

OTHER

Commission proposes to tackle invasive alien species within the EU

On 9 September 2013, the Commission issued a proposal for a Regulation on the prevention and management of the introduction and spread of invasive alien species. The proposal comes in the context of two Commission Communications and public consultations in 2008 and 2012, to which a wide spectrum of stakeholders submitted comments. The proposal provides for the Commission to

adopt a list of invasive alien species of EU concern, according to specific criteria including the carrying out of a risk assessment. Member States may also submit requests for inclusion of invasive alien species on the list. Invasive alien species on the Union list may not be brought into or transited through the Union territory, permitted to reproduce, transported (except for the purposes of eradication) or placed on the market, amongst other things. The proposal also imposes an obligation on Member States to put in place an official surveillance system, official controls at EU borders and general management measures to support the actions against invasive alien species under the proposed Regulation.

The full text of the Commission's proposal can be accessed via the following link:

<http://ec.europa.eu/environment/nature/invasivealien/docs/proposal/en.pdf>

The Months Ahead

13-14 November

ERA Conference 2013: Electrical and Electronic Equipment and the Environment, London, UK

<http://www.environmental-expert.com/events/era-conference-2013-electrical-and-electronic-equipment-and-the-environment-13907>

13-14 November

5th Annual Baltic Energy Summit, Helsinki, Finland

http://www.eeevents.co.uk/baltic_energy_summit_2013/

18-19 November

Shale Oil & Gas Exploration Technologies, London, UK

<http://www.ibcenergy.com/event/Shale-Oil-and-Gas-Exploration-Technologies>

18-19 November

EU Energy Law & Policy, Brussels, Belgium

<http://lexxion.eu/training/energy>

19 November

Nuclear New Build Forum 2013, London, UK

<http://marketforce.eu.com/events>

20 November

Waste Management Evaluation Seminar, Stratford-upon-Avon, UK

<http://www.environmental-expert.com/events/waste-management-evaluation-seminar-20-november-2013-13929>

20-21 November

Water & Waste Management for Shale Oil & Gas Exploration, London, UK

<http://www.ibcenergy.com/event/Water-and-Waste-Water-Management-for-Shale-Oil-and-Gas-Exploration>

21 November

Alternatives to wooden headedness: (much) less costly ways of regulating greenhouse gas emissions, London, UK

<http://marketforce.eu.com/events/economics-regulation/the-beesley-lectures>

25-26 November

Oil & Gas Cyber Security, London, UK

<http://www.smi-online.co.uk/energy/uk/>

27 November

Heat 2013, London, UK

<http://www.environmental-expert.com/events/heat-2013-14543>

29 November

The changing energy map: its implications for economic competitiveness, Brussels, Belgium

<http://www.friendsofeurope.org/>

2 December

How do we Stop the Lights Going Out? Policies to deal with Britain's Looming Energy Crisis, London, UK

<http://energy.spectator.co.uk/>

3-6 December

Pollutec Horizons 2013, Paris, France

<http://www.environmental-expert.com/events/pollutec-horizons-2013-14028>

4 December

Shale Gas – An unconventional resource, London, UK

<http://www.smi-online.co.uk/energy/uk/>

5 December

Energy Management Seminar, Stratford-upon-Avon, UK

<http://www.environmental-expert.com/events/energy-management-seminar-5-december-2013-13930>

5 December

European vs national energy policy in the light of international energy markets, London, UK

<http://www.smi-online.co.uk/energy/uk/>

9-13 December

Air Pollution 2013, Newcastle, UK

<http://www.environmental-expert.com/events>

10 December

Oil and Gas Joint Ventures – Building enduring partnerships, London, UK

<http://www.smi-online.co.uk/energy/uk/>

2014

14-16 January

Biogas Convention and Trade Fair, Nuremberg, Germany

http://www.envirotech-online.com/calendar_entry/biogas_convention_and_trade_fair/1576/

22-24 January

13th International Electronics Recycling Congress IERC 2014, Salzburg, Austria

<http://www.icm.ch/13th-international-electronics-recycling-congress-ierc-2014>

22-24 January

2014 Tenth International Conference on Environmental, Cultural, Economic and Social Sustainability, Split, Croatia

<http://www.onsustainability.com/split-2014>

28-30 January

European Unconventional Gas Summit 2014, Vienna, Austria

<http://www.theenergyexchange.co.uk/event/european-unconventional-gas-summit-2014>

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