



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
Directorate B – Circular Economy
ENV.B.2 – Safe & Sustainable Chemicals

Brussels
ENV.B.2/ 










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Dear 

Thank you for your email of 12 April 2023 and the position paper on Contemporary legal and political implications of PFAS pollution. Executive Vice-President Timmermans has asked me to reply on his behalf.

This paper is very timely, considering the many on-going regulatory activities on PFAS. It has been shared with all relevant colleagues.

Considering the large number of cases of contamination of soil and water, including drinking water, the Commission proposed a comprehensive set of actions in the Chemicals Strategy for Sustainability to ensure that the use of PFAS is phased out in the EU, unless proven essential for society.

Concerning the EU regulatory framework on PFAS, we took note of your analysis of the current status. Some sub-groups of PFAS are indeed already regulated under the EU POPs Regulation (PFOS, PFOA and soon PFHxS) or REACH Regulation (C9-C14 PFCA and soon PFHxA).

A REACH restriction on all PFAS in fire-fighting foams is currently being assessed in European Chemicals Agency (ECHA) Scientific Committees and the Commission expects to receive an opinion in the upcoming months. At that point, the Commission will consider amending Annex XVII of REACH for this specific use, responsible for the contamination of many sites.

In addition, five countries recently submitted a restriction dossier to ECHA, aiming to restrict all PFAS in all the other uses. This restriction will follow the same procedure and, at the end of the process, a restriction on the whole chemical class of PFAS is foreseen, with derogations for uses still necessary for health, safety or critical for the functioning of society and for which there are currently no alternatives.

Concerning your proposals on how the Environmental Liability Directive (ELD) could be applied in cases of contamination with PFAS, we would like to clarify as follows.

You criticise the ELD for the lack of a mechanism allowing citizens' suits against responsible party. This is not correct. The ELD enshrines a participatory mechanism allowing interested parties (both individuals and organisations) to request action with regard to environmental damage and to seek a judicial review of the relevant decisions of the competent authorities (see Articles 12 and 13 of the Directive).

However, the liability set out in the ELD only covers damage to the environment. This means that the response which can be requested under the ELD is a remediation or prevention of imminent threat of the environmental damage and not the compensation for civil damage. The Directive does not cover damage to health and property, as explicitly stated in Article 3(3), which provides that 'Without prejudice to relevant national legislation, this Directive shall not give private parties a right of compensation as a consequence of environmental damage or of an imminent threat of such damage'.

You are right in stating that at the time the ELD was adopted, it was considered that the EU was not ready for common rules on civil liability resulting from the environmental damage. However, the introduction of such rules has been recently proposed as part of revisions of sectorial environmental legislation, notably in the Industrial Emissions Directive¹ and in the ambient air quality Directives². In this context, it can be questioned whether the lack of a horizontal civil liability regime in the ELD remains relevant. This issue will be analysed in the ongoing evaluation of the ELD.

Yours sincerely,

(e-signed)

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¹ Directive 2010/75/EU of the European Parliament and of the Council of 24 November 2010 on industrial emissions (integrated pollution prevention and control) (IED), see Commission proposal for a revision: [Proposal revision industrial emissions directive](#)

² see Commission proposal for a revision [of the EU ambient air quality legislation](#)

