

DIGITALEUROPE request for EU PFAS derogations for Spare Parts and Pre-owned Products

DIGITALEUROPE members have been key contributors to EU REACH since its inception. As such, we look forward to continuing to share views, experiences and concrete recommendations with all stakeholders to jointly explore how better regulation can benefit society. We appreciate the opportunity to submit the following recommendations on the draft EU PFAS restriction for your consideration, and we look forward to a continued dialogue with the European Chemicals Agency (ECHA) on this important issue.

On behalf of our members, DIGITALEUROPE requests that the following derogations should be added to the EU PFAS restriction (DIGITALEUROPE is currently gathering technical information to support additional derogations):

- Spare parts for repair of finished electronic equipment already placed on the market,
- Re-supply of articles already placed on the market (pre-owned products)

These derogations are critical to help achieve EU goals of avoiding premature obsolescence and for compliance with laws promoting product longevity. The concepts of “right to repair” and allowing resale of pre-owned products have been broadly incorporated into other EU substance restrictions, and other EU REACH restrictions, and it is essential to incorporate them into the EU PFAS restriction to avoid major market disruptions.

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I. SPARE PARTS FOR REPAIR OF ELECTRONIC PRODUCTS ALREADY PLACED ON THE MARKET

A. ‘Repair as produced’ principle avoids premature obsolescence of electronic products

As highlighted in our [joint industry statement on parts replaceability and availability published July 2022](#), the electronics industry is aligned with the objectives of the Circular Economy Plan to promote durability of electronic products and is committed to offer high-quality repairs to customers. This includes:

- Focusing on availability of parts most likely to fail,
- Setting an optimized duration for spare parts availability, and
- Ensuring reasonable lead times for part availability.

An otherwise functional electronic product becomes prematurely obsolete if a component fails and a spare or replacement part is not available, and will be disposed of as e-waste. The well-established “repair as produced” principle allows finished electronic products already on the market before a compliance enforcement date to be repaired using spare parts that were compliant before that enforcement date.

For any currently available spare parts that contain PFAS, it would be impracticable to design, test, qualify, and produce PFAS-free spare parts by the compliance enforcement date of the PFAS restriction (EIF + 1.5 year transition period). Without a derogation, spare parts for electronic products may become unavailable immediately from the compliance enforcement date. If these electronic products stopped functioning, premature obsolescence and replacement with new electronic products may be the only option. The derogation would prevent this unnecessary generation of e-waste.

B. ‘Repair as produced’ precedents in EU substance restrictions

The “repair as produced” principle is commonly incorporated into EU substance restrictions as an essential tool to avoid premature product obsolescence, especially for long-lived capital goods and high-value electronic equipment. We recommend that this principle should be incorporated into the EU PFAS restriction for the same reasons.

[REACH Annex XVII Entry 68](#) restricts the use of linear and branched perfluorocarboxylic acids of the formula $C_nF_{2n+1}-C(=O)OH$ where $n = 8, 9, 10, 11, 12, \text{ or } 13$ (C9-C14 PFCAs) in semiconductors incorporated finished electronic equipment from 31 December 2023. These C9-C14 PFCA substances are a subset of the PFAS group of substances which would become restricted under the EU PFAS restriction. Para 9 includes the following “repair as produced” derogation for spare or replacement parts for finished electronic equipment placed on the market from 31 December 2023:

9. Paragraph 2(c) shall apply from 31 December 2030 to semiconductors used in spare or replacement parts for finished electronic equipment placed on the market before 31 December 2023

The [EU Restriction of the Use of Hazardous Substances \(RoHS\) Directive](#) (2011/65/EU) incorporates the “repair as produced” exemption for all in-scope electronic products. Article 4(4) excludes the following items from the substance restrictions in Article 4(1) for products placed on the market before specific compliance enforcement dates *“cables or spare parts for the repair, the reuse, the updating of functionalities or upgrading of capacity”*.

C. Ecodesign and Right to Repair Compliance

If a “repair as produced” derogation was not incorporated into the EU PFAS restriction, this would prevent companies from complying with other EU requirements, or proposed requirements, which are designed to minimize premature obsolescence of electronic products.

For example, [Commission Regulation \(EU\) 2019/2021 on ecodesign for electronic displays](#) mandates the availability of certain spare parts for electronic displays for at least seven years after placing the last unit of the model on the market. These spare parts must be delivered within 15 days of an order from a professional repairer or end-user. Without a “repair as produced” derogation, equipment for which spare parts would otherwise be available for seven years may become prematurely obsolete if a part fails.

The absence of a spare parts derogation would also prevent companies from complying with the proposed [Right to Repair Directive](#). Electronic products in scope of this Directive include televisions and electronic displays, servers and data storage products, mobile phones and tablets.

Electronic product manufacturers provide repair services for products under warranty or extended warranty agreements. Compliance with these repair services obligations frequently involves replacing non-functional parts as the most economical and environmentally favorable option to restore these products back to functional service lives. If equipment already on the market can no longer be repaired as produced, fulfilling warranty claims will more often result in premature obsolescence of electronic products that could otherwise be repaired.

D. Proposed text for spare parts derogation

The [Commission Regulation \(EU\) 2019/2021 on ecodesign for electronic displays](#) mandates the availability of certain spare parts for electronic displays for at least seven years after placing the last unit of the model on the market, this aligns with the seven year derogation in [REACH Annex XVII Entry 68](#) for spare or replacement parts for finished electronic equipment placed on the market from 31 December 2023.

In view of this, we recommend a minimum seven year derogation for spare or replacement parts for finished electronic equipment placed on the market before the compliance enforcement date of the PFAS restriction (EIF + 1.5 year transition period), as follows:

[xx]. Paragraph 2 shall apply from (8.5 years after EIF) to spare or replacement parts for finished electronic equipment placed on the market before (EIF + 1.5 years transition period)

The terms “spare or replacement parts” and “electronic equipment” are used in REACH Annex XVII Entry 68 without the need for these terms to be defined in REACH Regulation. In view of this, these terms can also be used in the PFAS restriction without the need for these terms to be defined in REACH Regulation.

E. Impact of the proposed spare parts derogation

The continued availability of spare parts is essential to increase the lifespan of electronic products and avoid premature obsolescence, thereby providing substantial socio-economic benefits. According to a [Eurobarometer survey](#) on the impact of digitalisation on our daily lives, 77% of Europeans would rather repair a device than buy a new one. According to another 2020 [Eurobarometer survey](#) on attitudes of European citizens towards the environment, nearly one-third of EU respondents had repaired a product within the past six months, rather than replacing it. In response, the European Commission published a proposal for a [directive on the right to repair](#) on 22 March 2023. Without a derogation for spare parts, this right to repair demanded by EU citizens would be threatened and the repair sector for impacted PFAS products and spare parts would cease to operate.

The proposed right to repair Directive aims to make repairs systematic, cost-effective and attractive by:

- Incentivising consumers to choose repair over replacement, for example by extending guarantees or receiving a replacement device for the duration of a repair,
- Informing consumers about ‘repair scores’, estimated lifespan, spare parts, repair services and availability of software updates,
- Developing smart labelling, such as QR codes or digital product passports.

Within the [legal guarantee](#) period, sellers would be required to offer to repair electronic products except when it is more expensive than replacement. Beyond the legal guarantee period:

- Manufacturers would be obliged to offer to repair electronic products for a further 5 to 10 years depending on the nature of the product concerned.
- Each Member State would be obliged to set up a free online matchmaking repair platform to connect consumers with repairers and sellers of refurbished goods in their area.

- A European Repair Information Form would become mandatory for all electronic products covered by the right to repair, to provide a framework for repair quotations and bring transparency to repair conditions and price.

In addition to these substantial socio-economic benefits, a derogation for spare parts to repair electronic products already placed on the market would also provide significant environmental benefits by reducing the resource consumption needed to manufacture whole new replacement products.

A report by the [European Environment Agency](#) estimates that in 2019 the EU repair sector for consumer electronics employed 104,000 people and generated revenues of 14.5 billion Euro. The EU repair sector for business electronics is expected to employ similar numbers of people and generate similar revenues. Without a derogation for spare parts, the repair sector for impacted PFAS products and spare parts would cease operations.

Applying the proposed spare parts derogation would not materially add to PFAS emissions in the EU. The electronics sector currently contributes [less than 1%](#) of the total PFAS emissions in the EU. The proposed restriction, which is focused primarily on avoiding future emissions from new product sales, would, in the absence of additional derogations, reduce those emissions to a very low baseline level.

Industry outreach to leading companies in the electronics sector indicates that spare parts represent a very small fraction of the electronics produced or imported in the EU. A small proportion of these spare parts contain low levels of PFAS. Permitting the continued production, import and use of PFAS-containing spare parts for the installed base of electronic products already on the market would result in negligible, and steadily declining, additional PFAS emissions. In addition, the [Waste from Electrical and Electronic Equipment \(WEEE\) Directive](#) requires collection and safe recycling of electronic products when they ultimately reach end-of-life, and so PFAS emissions from the waste stage of electronic products are already reduced.

II. RE-SUPPLY OF ARTICLES ALREADY PLACED ON THE MARKET (PRE-OWNED PRODUCTS)

A. Re-supply of pre-owned products supports a circular economy

A robust market for pre-owned products supports circular economy objectives by promoting resource conservation and prolonging product life. Without a derogation, PFAS-containing products already on the EU market could not be re-supplied to a new user after the compliance enforcement date for reuse as a second-life product.

In March 2022, the European Commission published a [proposal for a Regulation on Ecodesign for Sustainable Products](#) which sets new requirements to make products more durable, reliable, reusable, upgradable, repairable, easier to maintain, refurbish and recycle, and energy and resource efficient. All regulated products will have Digital Product Passports which will make it easier to repair and reuse products. This will create economic opportunities for innovation and job creation, notably in remanufacturing, refurbishing, repairing and reusing products.

PFAS is found in an extremely wide range of products on the market today. Failing to derogate the re-supply of pre-owned products from the PFAS restriction would ban the reuse of these products after the compliance enforcement date and stop these circular economy activities. Such products, even if functional, would be illegal to resell and would have to be discarded as waste. Resellers who cannot confirm that a product does not contain PFAS would have to assume that all their inventory contains PFAS and would need to be destroyed. The waste generation from disposal of serviceable products and the resource consumption from purchase of new replacement products would lead to a significant negative environmental outcome.

B. 'Resupply of articles' precedents in EU substance restrictions

It is normal practice for an EU substance restriction to include a derogation for resupply of articles already placed on the market, to support the circular economy by allowing re-use of pre-owned products. We recommend that this derogation should be incorporated into the EU PFAS restriction to align with normal practice in the EU.

[REACH Annex XVII Entry 68](#) restricts the use of linear and branched perfluorocarboxylic acids of the formula $C_nF_{2n+1}-C(=O)OH$ where $n = 8, 9, 10, 11, 12, \text{ or } 13$ (C9-C14 PFCAs) in semiconductors incorporated finished electronic equipment from 31 December 2023. These C9-C14 PFCA substances are a subset of the PFAS group of substances which will become restricted under the EU PFAS restriction. Para 6 includes the following "resupply of articles" derogation for products placed on the market before the compliance enforcement date of 25 February 2023:

6. Paragraph 2(c) shall not apply to articles placed on the market before 25 February 2023.

Previous REACH Annex XVII restrictions which are applicable to articles incorporate analogous derogations, examples include:

- Entry 51 restriction on certain phthalates, Paragraph 4(d) exempts "articles placed on the market before 7 July 2020."
- Entry 45 restriction on Diphenylether, octabromo derivative, Paragraph 3 states "By way of derogation, paragraph 2 shall not apply to articles that were in use in the Community before 15 August 2004."
- Entry 20 restriction of organostannic compounds, Paragraph 4(b) states: "Articles not complying with point (a) shall not be placed on the market after 1 July 2010, except for articles that were already in use in the Community before that date."
- Entry 19 restriction of arsenic compounds, Paragraph 7 states: "Member States may allow wood treated with other types of CCA solutions that was in use in the Community before 30 September 2007 ... to be placed on the market subject to the conditions pertaining to its use listed under points 4(b), (c) and (d)."
- Entry 18a restriction of mercury, Paragraph 2 states: "The restriction in paragraph 1 shall not apply to measuring devices that were in use in the Community before 3 April 2009."

The [Persistent Organic Pollutants \(POPs\) Regulation](#) (EU No. 2019/1021) allows the resupply of articles already placed on the market before the compliance enforcement date for a substance restriction.

Article 4(2) states “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.”

Under the New Legislative Framework, Union harmonisation legislation applies to new products until the products reach end users and does not prevent resupply of these products thereafter. Section 2.1, page 15 of the [Blue Guide](#) notes “Union harmonisation legislation applies when the product is placed on the market (or put into service) and to any subsequent making available until the product reaches the end-user. A product still in the distribution chain falls under the obligations of the Union harmonisation legislation as long as it is a new product. Once it reaches the end-user it is no longer considered a new product and the Union harmonisation legislation no longer applies.”

One regulation that is subject to the New Legislative Framework is the [EU Restriction of the Use of Hazardous Substances \(RoHS\) Directive](#) (2011/65/EU) which allows the resupply of articles already placed on the market before the compliance enforcement date. Article 4(3) builds on the exemption for resupply of category 7 and 10 equipment placed on the market before 1 July 2006 and states “Paragraph 1 shall apply to medical devices and monitoring and control instruments which are placed on the market from 22 July 2014, to in vitro diagnostic medical devices which are placed on the market from 22 July 2016, to industrial monitoring and control instruments which are placed on the market from 22 July 2017, and to all other EEE that was outside the scope of Directive 2002/95/EC and which is placed on the market from 22 July 2019.”

C. Proposed text for resupply of articles derogation

We recommend that the PFAS restriction should align with normal practice for an EU substance restriction and include a derogation for resupply of articles already placed on the market. We recommend the following proposed text:

[xx]. Paragraph 2(c) shall not apply to articles placed on the market before (EIF + 1.5 years transition period).

D. Impact of the proposed resupply of articles derogation

Incorporating this proposed derogation for resupply of articles would not result in any additional PFAS emissions. This derogation would not permit new PFAS-containing products to be placed on the market, instead it would permit PFAS-containing products already on the market to be reused and resold. There would be no additional impact to the environment and human health from implementing this derogation.

Instead, this proposed derogation would have a positive impact on consumers through access to lower cost, but still fully functional products available on the second-hand market. For example, around 20% of the components in cars placed on the market today contain PFAS.

Without this general derogation (and in the absence of additional application-specific derogations) there would be no market for second-hand cars in the EU after the compliance enforcement date.

This derogation would also provide environmental benefits by reducing the resource consumption needed to manufacture new products. A report by market research organization [Counterpoint](#) estimates that in 2021, the total number of new smartphones sold in the EU was about 102 million. About 12 million second-hand smartphones were sold as-is and a further 15 million smartphones were refurbished and sold for reuse in the EU in 2021.



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- [2] DIGITALEUROPE presentation on PFAS derogations requests for
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PFAS derogations requests for spare parts and pre-owned products

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NATIONAL
ASSOCIATIONS

100

COMPANIES

60+ Categories of uses identified in electronics*

Application area
Coatings
Printed circuit boards
High voltage/power applications
Cables and connectors
Components
Mechanical applications
Displays
Batteries
Fire prevention
Heat transfer
Chemical equipment
Chemicals
Others

*Excluding semiconductors, energy, medical, automotive, aerospace

Details
Capacitors, dielectric films
Electret films in microphones, sensors
Gaskets, sealing
Microphone/speaker vent membrane
Piezo in acoustical equipment
Rubber parts in image forming process in printers

- 1** Apart from proposed 12-year derogation for the semiconductor manufacturing process, **no derogations for the electronics sector**
 - No computing / communications products will meet 18 months transition period
 - Huge economic impact, business closures
- 2** **No derogation for spare parts** of existing products
 - No spare parts can be made available despite the requirement to do so under the EU Ecodesign directive/regulation
 - As is, restriction will lead to premature obsolescence of products on the market
- 3** **No derogation for refurbished or second-hand products** / articles already on the market

Use and emissions from electronics are less than 1% of the total PFAS use and emission

Derogation needed | Spare parts to repair consumer electronic products

7 years derogation needed to avoid premature obsolescence of existing consumer electronic products

- ▶▶ Impractical to design, qualify & produce PFAS-free spare parts for consumer products manufactured before PFAS restriction

Precedents in other REACH substance restrictions

- ▶▶ REACH restriction 68 on C9-C14 PFCAs (belong to PFAS family)

Compliance with other EU legislation

- ▶▶ EcoDesign regulation mandates spare parts for electronic displays until at least 7 years after placing the last unit on the market
- ▶▶ Guarantee obligations in proposed Right to Repair Directive

Impact of no exemption

- ▶▶ 77% of EU prefer to repair a consumer product than buy new one
- ▶▶ 30% of EU have repaired a product within past six months
- ▶▶ EU consumer electronics repair sector employs 104,000 people and generates 14.5 billion Euros revenues



ANNEX XVII TO REACH – Conditions of restriction

Restrictions on the manufacture, placing on the market and use of certain dangerous substances, mixtures and articles

Entry 68
Linear and branched perfluorocarboxylic acids of the formula $C_nF_{2n+1}-C(=O)OH$ where $n = 8, 9, 10, 11, 12, \text{ or } 13$ (C9-C14 PFCAs), including their salts, and any combinations thereof;
Conditions of restriction
1. Shall not be manufactured, or placed on the market as substances on their own from 25 February 2023.
2. Shall not, from 25 February 2023, be used in, or placed on the market in: (a) another substance, as a constituent; (b) a mixture; (c) an article, except if the concentration in the substance, the mixture, or the article is below 25 ppb for the sum of C9-C14 PFCAs and their salts or 260 ppb for the sum of C9-C14 PFCA-related substances.
8. Paragraph 2 (c) shall apply from 31 December 2023 to: (a) semiconductors on their own; (b) semiconductors incorporated in semi-finished and finished electronic equipment.
9. Paragraph 2(c) shall apply from 31 December 2030 to semiconductors used in spare or replacement parts for finished electronic equipment placed on the market before 31 December 2023.

Derogation needed | Spare parts to repair professional B2B products

15 years derogation needed to avoid premature obsolescence of existing professional b2b electronic products

Additional considerations apply for equipment with long lifetimes (e.g. telecommunication networks, industrial HVAC, industrial printing,...)

- ▶▶ lifetimes and contracted maintenance periods usually extends to 10 to 15 years in the product's first application (up to 25 years in some cases)
- ▶▶ The availability of spare parts is essential to realize the lifetime potential of such products
- ▶▶ In many cases spare parts for professional users have already been manufactured and are commercially available for customers at short notice, which is often contracted

No drop-in replacements (especially for fluoropolymers)

- ▶▶ PFAS-free spare parts are not drop-in alternatives as dimensional changes from alternative materials generally necessitate product re-design
- ▶▶ For products that are no longer commercially available it is unrealistic to design PFAS-free spare parts

Extended 'repair as produced' provisions in EU legislation

- ▶▶ RoHS Directive Art. 4(4) + 4(5) provide that restrictions do not apply to spare parts for products that were placed on the market before an exemption expired, or spare parts recovered from products placed on the market before restrictions applied

Impractical to expect products manufactured before PFAS restriction to comply

- ▶▶ Without an exemption, resale of pre-owned products will be banned
- ▶▶ Functional products would be discarded as waste
- ▶▶ No additional PFAS emissions (products already on market)

Normal practice in EU regulations and directives

- ▶▶ REACH restrictions 68, 51, 45, 20, 19, 18a, etc
- ▶▶ Persistent Organic Pollutants (POPs) Regulation
- ▶▶ All CE Marking directives and regulations

Compliance with ESPR

- ▶▶ Requires products to be easier to refurbish and reuse products

Impact of no exemption

- ▶▶ No EU second-hand car sales (20% of components contain PFAS)



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Conditions of restriction
1. Shall not be manufactured, or placed on the market as substances on their own from 25 February 2023. 2. Shall not, from 25 February 2023, be used in, or placed on the market in: (a) another substance, as a constituent; (b) a mixture; (c) an article, except if the concentration in the substance, the mixture, or the article is below 25 ppb for the sum of C9-C14 PFCAs and their salts or 260 ppb for the sum of C9-C14 PFCA-related substances.
6. Paragraph 2(c) shall not apply to articles placed on the market before 25 February 2023.

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7 years derogation for spare parts to repair consumer electronic products

- ▶▶ What additional information is needed to substantiate this derogation?

15 years derogation for spare parts to repair professional B2B products

- ▶▶ What additional information is needed to substantiate this derogation?

Derogation for re-supply of pre-owned products

- ▶▶ What additional information is needed to substantiate this derogation?

General

- ▶▶ Has impact of PFAS restriction on circular economy, right to repair and product longevity been considered?
- ▶▶ How should we estimate the number of companies / people affected?
 - Number of companies that manufacture electronic products?
 - Number of people / companies that use electronic products?

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Thank you for your attention and feedback!

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