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Consultation on a proposed restriction on the manufacture, placing on the market and use of per- and polyfluoroalkyl substances (PFAS)

Dear Sir or Madam

The Union of the Swiss Varnish and Paint Industry (VSLF), founded in 1907, is the national trade association of the paint, varnish and printing ink industry. More than 90% of the companies active in the coating industry in Switzerland are affiliated to the VSLF. In addition to multinational corporations, many small and medium-sized producers and suppliers of the coating industry also belong to the VSLF. The about eighty members represented by the VSLF generate annual sales of approximately three billion Swiss francs and employ around 4'500 people.

The purpose of this letter is to comment on the public consultation on a proposed restriction on the manufacture, placing on the market and use of per- and polyfluoroalkyl substances (PFAS).

General remarks

The proposed restriction is of an extremely broad nature. The proposal neither offers a structure of the more than 10'000 substances – which have hugely different intrinsic properties – nor does it differentiate between the risk profiles of the substances but instead proposes a comprehensive ban of the entire substance class. Therefore, while including substances for which a restriction is reasonable, the proposal also contains substances which use is safe and do not pose any environmental hazards.

By adopting a completely generic approach in which – besides producing and placing on the market – any type of use except for a few time-limited exemptions is prohibited goes much further than previous restriction proposals.

Uses in the paints, coatings and printing inks industry

The restriction proposal mentions a wide range of PFAS, with a particular emphasis on fluoropolymers, notably polytetrafluoroethylene (PTFE), which find application in paints and coatings. These substances play a vital role in enhancing various properties of coatings, such as scratch and abrasion resistance, as well as thermal and chemical resistance, which are crucial for specific end uses. They are utilized in anti-friction coatings for industries like automotive, mechanical engineering, and cutting equipment, as well as in non-stick coatings. PFAS-containing coatings are employed to improve the abrasion resistance of aircraft wings. In the domain of powder coatings, PFAS serve as structuring and matting agents, as well as for functional purposes like imparting slip and friction properties or acting as pigments for colouring. Another application of fluoropolymers is as binders (fluoroethylene/vinyl ether (FEVE) polymers), enabling the creation of highly durable outdoor coatings.

While certain compounds are used in minimal quantities, they hold significant technical importance, particularly in powder coatings, industrial coatings, automotive applications, and corrosion protection.

Coatings with fluoropolymers are crucial for ensuring the functionality and safety of safety-relevant fasteners (such as bolts, nuts, washers, clips, etc.) used in the assembly of chassis and tires. The current state of the art dictates that these coatings are necessary to achieve the required assembly condition, including proper pretensioning and clamping force. This ensures that the connections maintain their functionality and provide the necessary safety measures.

Furthermore, fluoropolymer coatings play a vital role in the proper functioning of seat belt restraint systems, particularly in cars. They prevent the belt from sticking to components in the event of an accident, which can occur due to the high thermal energy involved. This coating guarantees the continued functionality of the seat belt. Additionally, it ensures that the belt buckle can still be operated and opened under load after an accident.

At present, there are no viable alternatives available for these safety-critical applications, and it is unlikely that suitable alternatives can be identified and implemented within the planned transition period. This is because a large number of the substances in scope of the restriction are not classified as hazardous substances under the CLP Regulation.[1] Due to the absence of a requirement for raw material manufacturers to disclose information about non-hazardous substances in the supply chain, it is currently extremely difficult for

[1] Regulation (EC) No 1272/2009 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No 1907/2006 (CLP Regulation) (Consolidated version), OJ 2008 L 353/1.

companies in the coatings and printing inks industry to accurately gauge the extent to which individual companies are impacted.

Companies require a reasonable amount of time to gather all the necessary information to seek an exemption from the basic ban on PFAS. This is particularly crucial for PFAS applications where no alternatives currently exist or are foreseeable in the near future. Comprehensive studies along the entire supply chain must be conducted to collect data on the socioeconomic impacts of the restriction.

Many fluoropolymers, including widely used ones like PTFE, meet the criteria set by the Organization for Economic Co-operation and Development (OECD) for being classified as "polymers of low concern" (PLC). This classification signifies that these fluoropolymers are chemically stable, non-toxic, non-bioavailable, non-water soluble, and non-mobile. Consequently, fluoropolymers are also suitable for various applications such as materials for food contact, medical uses, and the production of high-purity active pharmaceutical ingredients.

Regulatory aspects

The legality of the group-based approach proposed in the restriction proposal raises questions. Article 69 of the REACH Regulation[2] specifies a substance-related approach for restrictions, which contradicts the proposed group-based approach. It is important to note that this objection remains significant, despite the existence of other restrictions on groups of substances listed in Annex XVII of the REACH Regulation.

Furthermore, the restriction proposal lacks a risk-based approach as it fails to conduct a risk assessment for individual substances or, at the very least, for substance groups with comparable properties. Consequently, the chosen restriction approach does not fulfil the criteria outlined in Article 68(1) of the REACH Regulation, which stipulates that restrictions can be implemented when there are "unacceptable risks." Consequently, imposing restrictions on substances used in applications that do not present any risks goes beyond the legal framework established by the REACH Regulation.

The primary justification for the restriction proposal is based on the persistence of the substances involved as well as other potential hazard properties such as mobility or bioaccumulation. However, the necessary risk assessment, as mandated by Article 68(1) of the REACH Regulation, which considers both hazard properties and exposures from various uses, has not been conducted. To establish a lawful, appropriate, and proportionate regulation of these substances, a differentiated approach is necessary. This approach should consider the specific properties of each substance and assess whether a PFAS substance or its use poses an unmanageable risk to the environment or human health. It is important to note that if certain applications do not result in environmental exposure, a complete ban may not be justified. It is crucial to allow for the continued safe use of specific PFAS where

[2] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2008 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (REACH Regulation) (Consolidated version), OJ 2006 L 396/1.

suitable alternatives are unavailable. Failing to do so would render the restriction proposal disproportionate.

Further steps

For the restriction proposal to be acceptable, we suggest various adaptions which ought to be considered:

- The restriction of PFAS should adhere to a substance-related and risk-based approach, as outlined in Article 68(1) of the REACH Regulation. It is important to note that not all PFAS substances necessarily present an unacceptable risk that would warrant a restriction.
- The restriction should incorporate differentiation among diverse groups of PFAS and consider the risks associated with their specific uses. It is necessary to exclude individual groups of substances, including specific fluoropolymers like PTFE, from the restriction proposal altogether.
- Adequate transition periods are necessary to facilitate the required changes. The proposed general transition period of 18 months is evidently insufficient for the conversion of all applications without exemptions.
- To ensure a legally robust assessment of the impact, it is crucial to establish a clear and well-defined scope for the restriction. In order to effectively analyse the impact across global supply chains, a comprehensive list of substances included in the scope, accompanied by their International Union of Pure and Applied Chemistry Names (IUPAC names) or Chemical Abstract Service Registry Numbers (CAS numbers), is necessary. This will enable a thorough evaluation of all affected uses of PFAS, preventing disruptions in the supply chain and ensuring that essential applications are not unintentionally overlooked or excluded.
- It is imperative to conduct a thorough assessment of the economic impacts throughout the entire supply chain, while considering the goals of fostering competitiveness, resilience, and sustainability within Europe.
- Comprehensive exemptions are necessary for socially important applications, particularly those related to safety, as well as key industrial uses such as hoses and seals. These exemptions are crucial to safeguard the uninterrupted operation of numerous industrial facilities and the continued existence of entire value chains and networks within Europe. Specifically, for safety-related applications like paints and coatings involving PFTEs, additional exemptions with longer transition periods are required.
- Given the technical significance of PFAS, it is crucial to have the option to review, extend, and reapply for exemptions. This is necessary to ensure that the exemptions remain aligned with the evolving understanding of PFAS and their applications.
- Exemptions should be granted to products that have already been introduced to the market for the first time. Without such exemptions, downstream users would be compelled to dispose of their existing stocks of substances, mixtures, and articles. This is due to the fact that, according to the REACH regulation, any process of making products available to third parties is considered as placing them on the market.

We thank you for your consideration of our concerns and remain at your disposal for any questions.

Kind regards
Union of the Swiss
Varnish and Paint Industry

Matthias Baumberger
Director