

EU Universal PFAS Restriction

Public Consultation– Initial Submission, CHEMOURS APM (Advance Performance Materials)

Please note this is an initial general contribution that describes our approach to the public consultation, detailed submissions will be submitted separately.

General Chemours Company Introduction

Per- and polyfluoroalkyl substances (PFAS) enable high levels of performance in critical technologies, including those required for the EU's transition to a green economy. The proposed blanket ban on PFAS under REACH has not been demonstrated to be an appropriate, proportionate, regulatory measure and it would have significant negative impacts on the EU achieving its policy objectives and EU strategic autonomy. Chemours, as an expert stakeholder on the properties, manufacture and applications of PFAS, intends to engage constructively in the public consultation and would like to take the opportunity to inform ECHA of its plans to submit information with the aim of facilitating better, more proportionate, regulation of PFAS through the restriction process.

PFAS are a large class of substances that have diverse and unique chemical properties. Given the range of relevant applications, it is not possible for Chemours to respond meaningfully to the consultation on a generic level. Rather, Chemours' two business units specializing in fluoropolymers and f-gases: Advanced Performance Materials (APM) and Thermal & Specialized Solutions (TSS) will make separate submissions to the public consultation.

Whilst TSS and APM will submit separate comments, both business units share a common objective: to demonstrate, that a more tailored (differentiated) approach to the scope and conditions of a restriction, recognizing the different properties and conditions of use of different PFAS, would ensure the safe use of PFAS without compromising the EU's policy and strategic objectives.

Chemours will structure its contribution using three complementary comment types. Where relevant, the effectiveness, practicality and monitorability of the proposed restriction will be compared with alternative restriction scenarios to objectively identify a more appropriate restriction scope and conditions.

To begin with, comments from both Business Units will focus on the risk assessment presented in the Annex XV report (the case-by-case risk assessment) that concluded that the whole PFAS class poses a risk that is not adequately controlled on an EU-wide basis. The comments in this part will explore if it is scientifically appropriate to group all PFAS for the purposes of a risk assessment and, specifically, if it is scientifically acceptable to read-across the hazard properties of some PFAS to other only distantly related substances. These comments will also explore if existing EU legislation, such as the F-gas regulation, the industrial Emissions Directive and the End of Life Vehicles Directive, to quote just a few, which provide already sufficiently stringent control of the potential risks deriving from PFAS across their lifecycle in specific uses.

Through additional comments, Chemours will explore, assuming that all PFAS are concluded to pose a risk, whether a restriction option other than a ban, for example, the mandatory use of specific risk management measures that control or minimize emissions and exposures across complete product lifecycles, would be a more appropriate approach to regulation that mitigates any identified risks; allowing uses with no credible alternatives to continue. These comments will

present alternative risk and regulatory management options as a counterpoint to the limited restriction option analysis presented in the Annex XV report.

Finally, Chemours will explore if, and under what circumstances, a phase-out of the use of PFAS could be managed differently, to ensure that their critical functions are not lost to society prematurely. Specifically, these comments will explore the scope and duration of transitional periods.

Advanced Performance Materials (APM) overarching approach

Advanced Performance Materials (APM), a segment of The Chemours Company, is a manufacturer, seller and downstream user of fluoropolymers that recognizes the concerns raised by the Dossier Submitters related to some PFAS.

Per and polyfluoroalkyl substances (PFAS) are a class of thousands of different, but chemically structurally-related substances, that have diverse and special properties. These properties have led to PFAS, in many instances fluoropolymers, being used in applications where they enable high levels of product performance, including in products critical for the EU's transition to a green economy, such as in state-of-the-art rechargeable batteries, the manufacture of semi-conductors (silicon chips) and hydrogen electrolyzers. Fluoropolymers are critical in many sectors such as chemical, aerospace, marine, industrial machinery, food production, electronics—to name just a few. These sectors do not operate independently of each other as they rely on and are supported by the key technologies and product applications across a range of industries, countless of which rely on fluoropolymers.

In 2020, the European Commission published the Chemical Strategy for Sustainability (CSS)¹ and announced an intention to ban non-essential uses of PFAS in the EU. In 2023, five European Countries² proposed a far-reaching ban on the entire PFAS class across industrial, professional and consumer uses under the EU REACH regulation; the proposed 'universal' PFAS restriction³. To avoid significant (i.e. disproportionate) negative impacts on EU society, the proposed PFAS restriction acknowledges that it will be necessary to continue to use PFAS in specific (derogated) uses, at least for the time needed until safer alternative substances or technologies become available.

A REACH restriction is any measure on the manufacture, placing on the market or use of a substance (on its own, in a mixture or in an article) to address an 'unacceptable' risk. REACH restrictions, therefore, are not limited to bans but can comprise, for example, requirements for use of risk management measures, training or certification. Before a restriction can be implemented, the European Commission and the EU Member States must have concluded that it is the most appropriate means to address the identified risk. To inform this decision, restriction proposals (also called Annex XV restriction reports) should include a comprehensive restriction and regulatory management option analysis (RMOA).

The advantages and disadvantages of the Member States proposal, including the restriction and regulatory management option analysis supporting it are now being considered by the European Chemicals Agency (ECHA). Specifically, ECHA's scientific committees for risk assessment (RAC) and socio-economic analysis (SEAC) are developing 'opinions' on the proposal for the European Commission, who will decide on whether to implement the proposal together with EU Member States. The RAC and SEAC opinions will be informed by the public consultation on the proposal,

¹ https://environment.ec.europa.eu/strategy/chemicals-strategy_en

² The Netherlands, Germany, Denmark, Norway and Sweden.

³ <https://echa.europa.eu/hot-topics/perfluoroalkyl-chemicals-pfas>

which is open until the 25th of September 2023. The RAC and SEAC opinions are expected during 2024.

APM considers that because the Annex XV report does not objectively identify and assess a complete range of potential restriction or regulatory management options (it only assesses the appropriateness of a ban), it has not been clearly demonstrated that the proposed restriction is the most appropriate mean to regulate the potential risks of PFAS. Specifically, the Annex XV report should include a comprehensive comparative restriction and regulatory management option analysis based on the criteria given in Annex XV of REACH of effectiveness, practicality and monitorability.

A ban of all PFAS, as currently proposed, will have significant negative impacts on European society, including on its strategic autonomy, many of which have not yet been identified and assessed in the Annex XV report. This is a significant limitation of the Annex XV report and is not consistent with evidence-based decision making and the principle of better regulation.

APM, as an expert in the manufacture, properties and applications of fluoropolymers, is committed to take an active, responsible and constructive role in the public consultation on the proposed restriction to facilitate the development of a coherent approach to the regulation of PFAS.

APM intends to demonstrate, using three types of comments (henceforth referred to as Type I, Type II and Type III), that an alternative restriction proposal, including a derogation for the continued use of fluoropolymers in industrial applications where potential risks to human health and the environment are controlled over their complete lifecycle, would be a more appropriate regulatory measure than a ban. The complete lifecycle, from the perspective of fluoropolymers, comprises their manufacture, processing, article service life, end-of-life (including recycling).

Type I comments will be focused on the underpinning risk-based justification for a restriction (case-by-case risk assessment) that concluded that the whole PFAS class poses a risk that is not adequately controlled on an EU-wide basis. Type II comments will explore, assuming that all PFAS are concluded to pose a risk, whether restriction options other than a ban, for example the mandatory use of specific risk management measures that control or minimize emissions and exposures across complete product lifecycles, would be a more appropriate approach to regulation; allowing critical uses to continue. Finally, Type III comments will explore if, and under what circumstances, a ban on the use of fluoropolymers could be managed to ensure that critical functions (and benefits) are not lost to society. Specifically, comments will explore the scope and duration of any transitional periods and under what circumstances it could be beneficial for society to phase-out the use of fluoropolymers in certain uses. The different types of comments are not mutually exclusive; in fact; they are complementary and will be used in combination to address the concerns of the restriction proposal.

The objective will be to demonstrate that an alternative risk management option would be more appropriate than the currently proposed restriction. Specifically, an option that will allow the continued use of fluoropolymers where their safety for human health and the environment can be ensured during their whole life cycle.

For example, we will submit comments that demonstrate that any potential risks associated with fluoropolymers in industrial use can be controlled by means other than a ban. Specifically, we will demonstrate that safe use can be ensured during the manufacture of fluoropolymers by requiring the use of specific emission abatement technology and end-of-life management. Safe use during service life and end-of-life can be ensured in applications that already have specific end-of-life

regulation, such as the end-of-life vehicles directive or the WEEE directive; particularly if a REACH restriction is used to supplement existing requirements and systems.

Due to the broad uses of fluoropolymers, APM will make a series of subsequent submissions based on their role in the value chain. The schedule for the submissions will be:

- Overall approach submission (this document) – July
- Manufacturing - July
- Use and End of Life – August/September
- Legal arguments – May/June/July
- Chemours as downstream user – July/August
- Summary and conclusions – September

APM is committed to evidence-based policy and regulation. We are confident that by working together it is possible to achieve a coherent, regulatory approach for PFAS that leads to the use of safer, better-performing chemicals in the EU, and enables the sustainability and success of the EU industrial value chain.

This can contribute to a future where the safe use of PFAS will advance progress toward important policy priorities.