

The Forum Working Group Enforceability of Restrictions – subgroup process revision

WebEx Meeting of the Forum Working Group 30 March 2022

Participants:

[REDACTED]

Item	Subject	Comments
1	Opening of meeting - Welcome	HET opened the meeting and welcomed the participants
2	Adoption of the Agenda	WG adopted the agenda
3	Mandate and objectives of the project	HET welcomed the new Chair of the WG, [REDACTED] who introduced himself to the WG. [REDACTED] indicated that [REDACTED] would be officially taking over the role of the Chair of the WG from 1 April onwards. WG members warmly welcomed the new Chair of the WG.
Advice on Enforceability of Restriction proposals		
4	Introduction to the restriction proposal on PFAS in firefighting foams  PFASsinFFF_DSpresentation_FORUM.ppt	[REDACTED] [REDACTED] from ECHA RT (restrictions team) and specialised in the techno-scientific aspects of the proposal, presented to the WG the restriction proposal on PFAS_S in firefighting foams (Reference presentation: see left side). [REDACTED] [REDACTED] from ECHA RT and specialised in the socio-economic aspects of the proposal contributed to the discussions. The meeting discussed the following points (<i>we have included the most relevant but please feel free to add other relevant ones</i>):

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| | <ul style="list-style-type: none"> Export is usually not included in the conditions of the restriction proposals. The reason why it is included in this restriction proposal is because we want to avoid transferring the problem with persistent organic substances outside the EU. Jorge indicated that control of exports under REACH could pose a problem because of the coordination between different authorities including customs in countries with a complex administrative structure and that export is usually not covered by REACH authorities. Eugen indicated that enforcement of PIC is consolidated throughout the EU and hence should not be such a structural problem. Albert indicated that they are assessing in [REDACTED] country whether <u>REACHthe Dutch general Environmental Act</u> could provide enough legal basis to enforce export <u>to Africa</u> of <u>high benzene containing certain substances fuels (fuels?)</u>. Export is included in RO3 (Restriction option 3) and the WG will advice on this specific matter. From the legal point of view, the WG members were, in general, of the opinion, that PIC regulates the export of substances and hence once the PFAS substances fall within the scope of the PIC Regulation, the conditions of export of these substances would be regulated and then it would be possible to control illegal export by PIC designated authorities. Currently, it seems that the PFAS substances are not covered by PIC and perhaps it would need to be clarified what would be the expectation to cover these substances under PIC. But this aspect is to be further refined in the advice. In principle, and according to WG, export may need to be excluded from the conditions of the restriction. If the intention is to ban the export then this would need to be covered by the inclusion of PFAS substances regulated by the restriction under the PIC Regulation. Another legalistic issue addressed the strategy for linking REACH to POP in the case of persistent organic pollutants following the restrictions pathway under REACH. Currently, it seems that the approach is that the Annex XV restriction proposal under REACH is the mechanism to follow in this case. <i>Extra note: WG can refer to the PFOA and DecaBDE cases which were regulated under REACH Annex XVII (following Annex XV opinion process) and then transferred to POP. Please clarify if there is something additional relevant for this discussion</i> |
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		• About analytical methods, there is a Norwegian study on PFAS which describes a number of analytical methods. The remark is that the Annex XV does not seem to discuss the problem of analytical methods as far as the WG has read the dossier so far. Analysis is a relevant aspect in this dossier. • How the restriction links to the PFAS general restriction planned. For the time being these are the substances proposed to be regulated for these specific applications or uses. • Links to SEVESO, why so long deadlines for phasing out PFAS in this type of installations? SEVESO Directive and the environmental permits provide for conditions to limit the emissions of PFAS. Hence the assumption is that there is much more control of the substances in this type of companies if there was an accidental spill or in case the actuation of the firefighting foams was needed following an accident at the SEVESO site. • The ECHA RT (Restrictions Team) has proposed several questions to be addressed by the Forum during the elaboration of the Forum advice. These questions could be relevant for the development of the RAC and SEAC opinions. The WG agreed that the rapporteur would assess the questions and identify which of them are prioritised for enforcement authorities in collaboration with the WG. Then, the WG could integrate the questions into the process, consult the Forum on them, and cover the answers in the specific questions in the Forum advice. • The WG discussed which restrictions options would be most relevant to address in the opinion process. RT indicated that RO3 and RO4 would be the most relevant at this moment. Considering that the dossier submitter approach is that they propose the option which has the wider scope. The opinion-making process may lead to reduce the scope while adding scope is not an option because this additional scope would not have been subject to proper evaluation and consultation throughout the opinion process. RO4 covers possible derogation for Defense and SEVESO sites based on permit systems.
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		WG is invited to comment on the restriction proposal by 22 April. They can send early comments so that [REDACTED] the rapporteur for this dossier, can start drafting the Forum advice. The comments are to be provided in the specific collaboration document launched in Interact Portal. Members can also react to the comments provided by peer colleagues so that [REDACTED] can have a good opinion on the topics. If we all use Interact Portal it is much more dynamic and easier to handle.
5	Update on planning of restrictions F40_2.10.2_WG_Restrictions_advice.ppt	HET presented to the WG the plan for the next months regarding the new restriction proposals. We have three proposals in the pipeline processed by RAC and SEAC for conformity-check in Q2. If in conformity, the Forum will examine these proposals from the end of June onwards (Reference presentation: see left side). These proposals are: • Creosote: the restriction applies to the placing on the market and reuse of treated articles containing creosote. [REDACTED] initially expressed interest on this dossier provided that certain flexibility is given to elaborate the advice. HET indicated that clearly there is a need to accommodate the availability of the experts in the WG during the summer period so in that sense we could negotiate a planning fitting the rapporteurs. [REDACTED] will confirm this later. • DMAC: aprotic solvent, dossier in the line of restrictions like NMP setting DNEL (OSH expertise welcomed). • Terphenyl, hydrogenated: restriction on the use of Terphenyl, hydrogenated as a substance, in mixtures and articles or parts thereof. The WG members are invited to consider their involvement as rapporteurs for this dossier. There is still some time (three months) to think about it, but we should aim at finding the rapporteurs well in advance.

Revision of the process for development of Forum advice		
1	State of play with the process	HET informed that following the meeting on 4 February comments were sent by [REDACTED] and [REDACTED]. In addition, ECHA has also provided suggestions for improvement. The comments were mainly provided for the process itself (working procedure of the Forum).
2	Presentation of the restriction process  Restriction_general presentation_Forum	[REDACTED] (ECHA WG – Risk Management I unit), presented to the WG the restrictions process focusing on the opinion development in ECHA (for reference see presentation in the left side). The presentation is intended to illustrate the WG members on how the restrictions process works and to catalyse the discussions for the improvement of the Forum restrictions process. The WG welcomed the presentation and tackled different questions. Eugen requested whether this process we have of the revision of the process takes into account the plans to change the restrictions process in the revision of REACH. [REDACTED] said that we need to stick to the current restriction process. There is not clarity yet on how the restrictions-authorisations process will look like in the future so better to keep the discussion aside for the time being. [REDACTED] replied to the additional questions and [REDACTED] welcomes any further question on the process.
3	Discussion of comments submitted by WG members  Annex%201%20-%20Regulation%20(EC)	The WG discussed the following issues relevant for the improvement of the Forum restrictions process: • Transparency of the Forum advice - two issues are at stake ◦ Integration of Forum advice or parts thereof in the public documents issued by ECHA (RAC and SEAC opinions, background document to the opinions). WG sees this positive as it reflects how the Forum advice has been tackled by RAC, SEAC and the DS (see the document: Assessment of enforceability of REACH Annex XVII restrictions and impact of the Forum

		advice). However, the meeting on 4 February highlighted that this matter would need to be tackled as Forum has classified the advice as an internal document. ○ Access to documents requests known as ATD requests (see regulation EC No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents in the left side (<i>remark, this summary is not going to cover all the legalistic details to the extent they were covered during the meeting</i>). It happens that more and more the Forum advice is in the radar of stakeholder organisations which are aware that Forum provides an advice for every restriction proposal tackled by ECHA. In this context, ECHA has received in two years time two ATD requests requesting for the Forum advice. The most recent one concerns the request for the advice on the restriction proposal regarding lead and lead compounds adopted by the Forum on 15 February 2022 submitted by ECHA. HET consulted the Forum for any potential comment and concern regarding the release of the document. ATD Regulation is very strict and the application of the exceptions for release of the documents kept by the European institutions is really limited. • [REDACTED] (Legal Affairs Unit in ECHA known as LAU) presented to the WG the general lines of how ECHA applies the exceptions of the ATD Regulation (<i>we do not tackle all the grounds. These will be covered in the reply to the Forum following the decision to release the Forum advice to the requestor of the advice. We will send the reply to the WG as well</i>). In summary, the conclusion is that there are, in general, no grounds to object to the release of the Forum advice when applying the exception in Art. 4.2 or Art.4.3. Also, [REDACTED] had concerns that even the classification of the Forum advice as an internal document was not duly justified. [REDACTED] also reminded the WG that even the Commission Regulations adopting the restrictions explicitly refers to the consultation of the Forum and the fact that the recommendations of the Forum were considered during the consultation (<i>not sure that there is a general formula for the preambles of the Regulations, but we have</i>
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		<i>also analysed this aspect in the document Assessment of the enforceability of the Annex XVII restrictions</i>). Hence in conclusion, there is, in the eyes of the LAU little margin to block the Forum advice from release if ATD requests are sent to ECHA. • Further discussions concerned the so called RCOM table consisting of the table compiling the comments provided by the Forum and the WG members to the restriction proposal and the responses to the comments provided by the rapporteur and any other comment provided within the context of the elaboration of the Forum advice. It was clarified that these comments and this table is not part of the Forum advice and hence they are out of the scope of the ATD request on the Forum advice. We have also excluded from the delivery specific comments provided by Forum members (as it was the case for the ATD request processed in 2020 in relation to the Forum advice on lead shots over wetlands where we removed the annex I containing Forum members replies). Hence the recommendation is to draft the Forum advice considering the possible release (i.e. to avoid to provide details of a specific MS). • Question was raised about the support document elaborated by the WG giving a WG position on specific questions raised by RAC and SEAC after the delivery of the Forum advice. HET indicated that this support document was not subject to a specific ATD so far. However, regarding the fact that this is not a document adopted by the Forum, HET indicated that while the document itself is not adopted by the Forum, the methodology by which the WG is responsible to provide this support has been adopted by the Forum (ref. working procedure of the Forum to develop Forum advice and support to RAC and SEAC on restriction proposals). It is at this moment unclear how an ATD on this document would be considered but the WG did not put the focus on this topic (<i>remark, it is possible that this WG special document is removed from the new working procedure under development so no emphasis should be put on this specific aspect</i>). • The WG agreed to bring this issue to the Forum so that there is a discussion in the next plenary meeting of the Forum to discuss the transparency of the Forum advice. The WG will draft a document included in the progress report and
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		discussing pros and cons in collaboration with ECHA. It was also suggested to bring this issue to the ECHA Directors in conversations with the Chairmen of the Forum. • Input from RAC and SEAC: it was raised the need to get feedback from RAC and SEAC and the Dossier submitter on the Forum advice. It is important to understand the rationale of the advised bodies. • It was also agreed to organise a meeting, at ECHA level, with RAC and SEAC Chairmen to discuss the improvement of the advices from RAC and SEAC perspective. This was done in the past and the Chair of the Forum requested whether RAC and SEAC were going to be involved in the discussions. • Other aspects tackled mainly regarding the timelines and relevance of the advice at different stages of the process. These discussions conclude on point 4 on next steps.
4	Next steps	HET and ██████ in collaboration with ECHA restrictions unit will make a general proposal to simplify the restrictions' Forum advice process based on the following aspects tackled during the discussions in the WG: • The advice of the Forum could be officialised (formulated and adopted by Forum) at a later stage in the opinion-forming process to be determined. With this strategy, we could try to simplify the formalistic steps and cover the changes introduced to the proposal at later stages if needed. ECHA commits to inform the Forum on relevant changes as soon as they are internalised in the opinion process. • The comments provided at earlier stages of the process could facilitate that RAC has relevant input from the Forum related to hazard and exposure and that SEAC has relevant comments on its field of competence.

		• The integration of pertinent questions from RAC and SEAC rapporteurs, the dossier submitter and ECHA RT in process of the Forum and the WG could also facilitate the opinion and the assessment of enforceability of the Committees. • It is also important to guide the Forum on the Restrictions options which are more relevant for the process so that we can get input on these more plausible options. • Other aspects will be taken into consideration when reviewing all the comments provided by the WG and ECHA. Further refinements will be done at a later stage. The focus now would be on a more flexible and less formalistic approach. It is also relevant to develop a more dynamic system for interaction within the WG. The use of Interact portal is essential for this process. • Another follow-up meeting will be organised in the end of April or beginning of May to discuss the <i>general-lines</i> proposal. HET will table all the comments to be further discussed in future meeting.
8	closing of the meeting	HET closed the meeting

The aims of this meeting are:

1. *To introduce the members of the WG the restriction proposal regarding PFAs in firefighting foams*
2. *To raise awareness of the upcoming dossiers with the view to find rapporteurs*
3. *To discuss comments received for the revision of the process for developing Forum advice*