



VdL position on the PFAS restriction proposal (as of 21st June 2023)

Background

On 13 January 2023, the lead authorities from Germany, the Netherlands, Denmark, Sweden and Norway submitted a restriction dossier to restrict all PFAS (per- and polyfluoroalkyl substances). This was published in advance on 07.02.2023. On 22.03.2023 the conformity of the restriction proposal was confirmed by the ECHA committees, and a public consultation was started.

Evaluation of the restriction proposal

- General

The restriction proposal is very broad. No structuring or subdivision of the more than 10,000 substances, which have very different intrinsic properties, is apparent. No differentiation that considers the different risk profiles of the substances is made. Instead, a comprehensive ban of the entire substance class is proposed. Thus, the proposal includes substances for which a restriction is reasonable and comprehensible, as well as substances that can be used safely and do not lead to relevant emissions into the environment in the respective applications.

Whereas in the framework of previous restriction procedures, individual uses for which an unacceptable risk is known in accordance with Article 68 (1) of the REACH Regulation have usually been specifically banned, the proposed PFAS restriction is the first to adopt a completely generic approach in which - apart from production and placing on the market - any type of use (apart from a few, predominantly time-limited exemptions) is prohibited.

Such a comprehensive and undifferentiated ban on PFASs would have a massive impact on European companies in the coatings and paint industry, which rely on a wide range of raw materials. In order to maintain certain functionalities, also certain fluoropolymers, such as PTFEs, are required. Due to the reduced availability of substances in Europe, for which there are currently no suitable alternatives, the goals of the Green Deal could not be achieved in the time envisaged and dependence on imports would increase.

As foreseen in Art 68 of the REACH Regulation, only substances (not groups of substances) posing an "unacceptable risk" should be regulated via restrictions. This principle should also be applied to PFAS and only uses that actually pose risks to humans and/or the environment should be substituted.

A large number of the substances in scope of the restriction are not classified as hazardous substances under the CLP Regulation. As raw material manufacturers are not obliged to pass on information on non-hazardous substances in the supply chain, it is difficult at this stage for companies in the coatings and printing inks industry to estimate how extensive the actual extent to which individual companies are affected is.

In order to compile all the relevant information for an exemption from the basic PFAS ban - especially for PFAS applications for which no alternatives currently exist or are not even foreseeable - companies need a reasonable amount of time. For example, since data on socio-

economic impacts of the restriction must first be collected as part of comprehensive studies along the entire supply chain.

Many fluoropolymers relevant to industry, such as PTFE, meet the OECD criteria for "polymers of low concern" (PLC). This means they are chemically stable, non-toxic, non-bioavailable, non-water soluble and non-mobile. For these reasons, fluoropolymers are also suitable, for example, as materials for food contact, in medical applications or in the production of high-purity active pharmaceutical ingredients.

- Regulatory

- The group-based approach of the restriction proposal is legally questionable. According to Art. 69 of the REACH Regulation, a substance-related approach is prescribed for restrictions. This objection remains relevant even though various other restrictions on groups of substances are included in Annex XVII of the REACH Regulation.
- Also, the restriction proposal is not risk-based, as no risk assessment of individual substances or (at least) individual substance groups with uniform properties has been carried out. Thus, the chosen restriction approach does not meet the requirements of Article 68(1) of the REACH Regulation, which provides that restrictions may be adopted in the presence of "unacceptable risks". Therefore, a restriction of substances in applications that do not pose a risk exceeds the legal framework provided by the REACH Regulation.
- The restriction proposal is mainly justified by the persistence of the substances and other possible hazard properties such as mobility or bioaccumulability. The actual risk assessment required by Article 68(1) of the REACH Regulation, which considers not only hazard properties but also exposures from the various uses, has not taken place. For a lawful, appropriate, and proportionate regulation of the substances, a differentiated approach is required. This must take into account the different properties of the substances and include an assessment of whether a PFAS substance or its use poses an unmanageable risk to the environment or human health. In particular, if no environmental exposure occurs in specific applications, a ban is not justified. Safe uses of certain PFAS that cannot be replaced by suitable alternatives must continue to be possible in Europe. Otherwise, the restriction proposal is disproportionate.

- Uses in the paints, coatings and printing inks industry

From the wide range of PFAS mentioned in the restriction proposal, mainly the fluoropolymers, especially PTFE, are used in paints and coatings. They help impart important properties to coatings, such as scratch and abrasion resistance, as well as thermal and chemical resistance, which are essential for the specific end uses. They are used in anti-friction coatings for the automotive, mechanical engineering and cutting equipment industries, as well as in non-stick coatings. PFAS-containing coatings are used to increase abrasion resistance on aircraft wings. In the powder coatings sector, PFAS are used, among other things, as structuring and matting agents, and also for functional applications such as slip and friction properties or as pigments for coloring. Another application of fluoropolymers is as binders (FEVE polymers). These enable extremely durable coatings to be applied outdoors.

Some of the compounds are only used in very small quantities but are of great technical importance. This applies, among other things, to the areas of powder coatings, industrial coatings, automotive and corrosion protection.

In the assembly of chassis and tires, for example, safety-relevant fasteners (e.g. bolts, nuts, washers, clips, etc.) are used whose functionality can only be ensured by coatings with fluoropolymers according to the current state of the art. The coating ensures that the required defined assembly condition (including pretensioning and clamping force) is met, so that the connection retains its function and the necessary safety.

Fluoropolymer coatings are also essential for the function of seat belt restraint systems, for example in cars. They prevent the belt from sticking to the components in the event of an accident due to the high thermal energy that occurs, thus guaranteeing the belt's functionality. In addition, this coating ensures that the belt buckle can still be operated and opened under load after an accident.

In these safety-relevant applications, no adequate alternatives are currently available, nor can they be found and established within the planned transition period.

- Requirements

- The restriction of PFAS must be **substance-related and risk-based** (Art. 68 para. 1 of the REACH Regulation). Not all PFAS pose an unacceptable risk that would justify a restriction.
- The restriction must **differentiate between the various PFAS groups** and the risks posed by their uses, and **must exclude individual substance groups from the restriction proposal altogether (including certain fluoropolymers such as PTFE)**.
- **Appropriate transition periods are required.** The general period of 18 months is clearly too short for the conversion of all applications for which no exemptions are provided.
- In order to enable a legally sound assessment of the affectedness, **the scope of the restriction must be clearly defined.** To analyze the affectedness along global supply chains, a list of substances in scope containing IUPAC names or CAS no. is required. This is the only way to evaluate all affected PFAS uses to avoid supply chain disruptions and ensure that important applications are not unintentionally excluded.
- Economic impacts along the entire supply chains need to be fully assessed, taking into account the aspirations for a competitive, resilient and sustainable Europe.
- **For socially important - such as safety-related applications as well as for key industrial applications (hoses, seals), comprehensive exemptions are needed** in order not to jeopardize the continued operation of countless industrial plants, the continued existence of entire value chains/networks in Europe. Especially for the above-mentioned safety relevant uses in paints and coatings of PFTes additional exemptions with a longer transition period are needed.
- **The possibility to review, extend and reapply for exemptions is urgently needed** in view of the technical importance of PFASs.
- **Products already placed on the market for the first time should be exempted from the restriction.** Otherwise, existing stocks of substances, mixtures and articles at downstream users would have to be disposed of, since under REACH every process of making available to third parties is considered as placing on the market.