

From: [REDACTED] (GROW)
Sent: 08 November 2016 17:30
To: [REDACTED]
Cc: [REDACTED]@digitaleurope.org; [REDACTED] (GROW); [REDACTED] (GROW); GROW D1
Subject: RE: PFOA restriction status

Dear [REDACTED]

In view of the definition of "placing on the market" in Article 3(12) of REACH, we have not hitherto considered it necessary to produce guidance on the term. In the absence of any reference to 'first' supply or making available in the definition, placing on the market simply covers any occurrence of placing on the market throughout the supply chain from the first (by the manufacturer or importer) to the last (by a supplier to an end user).

Kind regards,

[REDACTED]

From: [REDACTED]@hpe.com]
Sent: Tuesday, November 08, 2016 11:10 AM
To: [REDACTED] (GROW)
Cc: [REDACTED]@digitaleurope.org; [REDACTED] (GROW); [REDACTED] (GROW); GROW D1
Subject: RE: PFOA restriction status

Dear [REDACTED]

Thank you for your response. Is there any written guidance or document which clarifies this?

Kind regards,

[REDACTED]

From: [REDACTED]@ec.europa.eu]
Sent: Tuesday, November 08, 2016 9:17 AM
To: [REDACTED]@hpe.com>
Cc: [REDACTED]@digitaleurope.org; [REDACTED]@ec.europa.eu; [REDACTED]@ec.europa.eu; GROW-D1@ec.europa.eu
Subject: RE: PFOA restriction status

Dear [REDACTED],

[REDACTED] has asked me to look into your query and reply.

You are correct that, unlike most Union product harmonisation legislation such as ROHS (to which you refer), "placing on the market" in REACH does not mean the first making available. However, you need not concern yourself about the effect of the exemptions in paragraphs 6(a)

and 4(e) of the proposed restriction on PFOA. The references in those provisions to "placed on the market" *include* the first time that the articles/mixtures in question were placed on the market.

So, for example in relation to paragraph 6(a), let us say that the restriction applies from 1 June 2020 (3 years after entering into force on 1 June 2017). In that event, articles (e.g. spare parts) that were "placed on the market" on 30 May 2020 – including articles placed on the market for the first time on 30 May 2020 – will be exempted from the restriction. In other words, the exemption does not require that all placings on the market in the supply chain must be completed before the date of application of the restriction. It is enough if the first placing on the market took place before that date.

I hope this alleviates your concern.

Kind regards,

[REDACTED]

[REDACTED]



European Commission

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From: [REDACTED] [@hpe.com](mailto:[REDACTED]@hpe.com)

Sent: Monday, November 07, 2016 1:50 PM

To: [REDACTED] (GROW)

Cc: [REDACTED] [@digitaleurope.org](mailto:[REDACTED]@digitaleurope.org); [REDACTED] (GROW); [REDACTED] (GROW)

Subject: RE: PFOA restriction status

Dear [REDACTED]

Looking at this, I wonder if the wording of current draft proposal, in particular for the derogations, needs to be further clarified in the annex text, given on the placing on of the market (PoM) definition of REACH. The REACH PoM definition means the making

available, whether an importer or a distributor in the EU, and that placing on the market for the first time (which is how PoM is defined under RoHS) is more an interpretation. I have been further digging into this, as there seem to be many actors confused between 'entry into force' and the 'date of application'.

As such, whether for the derogation we are seeking for spare parts, but also in general, as currently drafted under paragraph 6, would it not be more clear if the derogation was drafted as following:

Paragraph 2(c) shall not apply to:

- (a) *articles placed on the market **for the first time** before [date – 3 years after date of entry into force of this Regulation]*

If legislated as placed on the market without 'for the first time' provision, would this not disallow the sale of articles already placed on the market? This would not only be applicable to 6(a), but also to 4(e) for example.

Best wishes,

[REDACTED]

From: [REDACTED] [\[REDACTED\]@ec.europa.eu](mailto:[REDACTED]@ec.europa.eu)
Sent: Monday, October 17, 2016 12:03 PM
To: [REDACTED] [\[REDACTED\]@hpe.com](mailto:[REDACTED]@hpe.com)>
Cc: [REDACTED] [\[REDACTED\]@digitaleurope.org](mailto:[REDACTED]@digitaleurope.org); [REDACTED] [\[REDACTED\]@ec.europa.eu](mailto:[REDACTED]@ec.europa.eu);
[REDACTED] [\[REDACTED\]@ec.europa.eu](mailto:[REDACTED]@ec.europa.eu)
Subject: RE: PFOA restriction status

Dear [REDACTED]

Thank you for your message. Here's the reply to your question:

SEAC proposed to exempt the placing on the market of spare parts that are already *produced* at the *date of entry into force* of the restriction. So there was never any question of allowing continued production of *new* spare parts.

In line with our normal practice, our proposal would exempt articles placed on the market before the *date of application* of the restriction (i.e. 3 years later than the *date of entry in force* proposed by SEAC).

Consequently, all spare parts that have been produced by then and are already in the supply chain (i.e. on the premises of a distributor or any other company other than the original producer) can continue to be sold and used.

This will indeed not cover stocks of spare parts produced but not yet placed on the market (for the first time) by the producer, but it would cover all spare parts (that are articles) which are already in the supply chain on the date of application of the restriction.

So our proposal would only be slightly less generous than SEAC in that only stocks in the supply chain are covered (and not stocks held by producers) but more generous in that we exempt articles placed on the market right up to the date of application (as opposed to entry into force) of the restriction – so 3 more years. Producers thus have an extra 3 years to get their stocks into the supply chain.

I hope this clarifies the situation. If not, feel free to call – which should be easier than setting up a meeting.

Regards,

[REDACTED]

[REDACTED]



European Commission

DG for Internal Market, Industry, Entrepreneurship and SMEs

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From: [REDACTED]@hpe.com]

Sent: Monday, October 17, 2016 10:55 AM

To: [REDACTED] (GROW)

Cc: [REDACTED]

Subject: RE: PFOA restriction status

Importance: High

Dear [REDACTED]

We have been able to view the draft PFOA restriction proposal through the WTO notification process. We are happy to see that some of our requests were maintained, such as the necessary transition time. However, an important point for Digital Europe's membership, the provision for spare parts, as was still proposed by SEAC final opinion, has been removed from the final draft

restriction. This is a major concern for our industry, in particular for our repair and refurbishment activities which span across the globe.

Given our concern, and given the REACH Committee agenda of next week, would it be possible for us to meet this week in order to understand why the spare parts provision was left out? I have some meetings already planned this week, but I can move or cancel these in order to meet your availability.

Kind regards,

[REDACTED]

From: [REDACTED] [\[REDACTED\]@ec.europa.eu](mailto:[REDACTED]@ec.europa.eu)
Sent: Tuesday, September 06, 2016 11:56 AM
To: [REDACTED] [\[REDACTED\]@hpe.com](mailto:[REDACTED]@hpe.com)>
Cc: [REDACTED] [\[REDACTED\]@digitaleurope.org](mailto:[REDACTED]@digitaleurope.org)
Subject: RE: PFOA restriction status

Dear [REDACTED]

We are in the process of finalising the proposal for an amendment of Annex XVII to be presented to the REACH Committee.

We expect that this can be done for the meeting of the Committee on 26/27 October – and the draft would then also be made publicly available in the Comitology Register.

Regards,

[REDACTED]

[REDACTED]



European Commission

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[ec.europa.eu/bienkowska](#)

From: [REDACTED] [@hpe.com](#)
Sent: Tuesday, September 06, 2016 11:38 AM
To: [REDACTED] (GROW)
Cc: [REDACTED]
Subject: PFOA restriction status

Dear [REDACTED]

I am writing you as the representative of Digital Europe, where I am the REACH restrictions issue lead. As we are in the process of informing or updating our members on the latest developments on chemicals, I would like to know if there is any news on where the PFOA proposal stands and if there is anything you can share (such as a final draft, or anything on the timeline).

Kind regards,

[REDACTED]

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