

Statement on ECHA's Enforcement Forum advice on the enforceability of the PFAS restriction proposal

As the voice of the fluoropolymer manufacturing industry in Europe, the Fluoropolymers Product Group (FPG) of Plastics Europe advocates for a balanced regulatory environment based on scientific facts to ensure that European industries remain competitive and sustainable. FPG is actively involved in the ECHA phase of the PFAS REACH restriction process and submitted its position to the 2023 public consultation. We recognise there are concerns over substances defined as PFAS. We are committed to working closely with regulators, our value chain and other actors to address these concerns.

On 8 November 2023, **ECHA's Enforcement Forum published its advice on the enforceability of the PFAS restriction proposal** which was submitted by the five national authorities of Denmark, Germany, Netherlands, Sweden and Norway. The Forum's advice is an integral part of the REACH restriction process, and **its advice will be considered in the next steps of the process** including the RAC and SEAC committees and the Commission when developing its restriction proposal.

The Forum's advice presented a pragmatic approach, recognising that the proposal in its current form will be challenging to enforce by the EU Member States. Additionally, the Forum flagged that there would be challenges in the practicability of the proposal, while it considers that the enforcement costs will be significantly higher than for usual restrictions with a more targeted scope.

More specifically:

On enforceability: Looking at the proposal, FPG observes that certain PFAS substances, like fluorinated gases, have already undergone regulation through distinct frameworks, such as the F-gas Regulation. Consequently, the implementation of the PFAS REACH restriction would result in double regulation. The Forum confirms that some PFAS is already regulated in various other legal acts (POPs regulation, F-Gas regulation, CFCs regulation) and will complicate enforcement of the broad PFAS restriction. They conclude that guidance on the interaction of the restriction with obligations of POPs, F-Gases and CFCs would be useful. The Forum stresses that at least the restrictions on PFAS within the POPs regulation (PFOA, PFOS) and REACH Annex XVII (C9-C14 PFCAs, 6-2 FT silane triol) should be consolidated in the universal PFAS restriction once this restriction enters into force.

Further, FPG considers the proposal lacks clarity on certain of its core provisions. It is not clear whether an importer of mixtures or articles containing fluoropolymers above 50ppm would fall under the obligation of establishing a **management plan**. Confusion is also arising from the provisions concerning the **limit values** applicable to products containing polymeric PFAS and those without polymeric PFAS. As confirmed in the Forum's advice, more clarity is needed regarding the obligation for the establishment of a management plan. The Forum also points out that the limit value of 50 ppm for PFAS (polymeric PFAS included) "shall apply if targeted analysis is not applicable, e.g., in the case of fluoropolymers" needs to be clarified.

Relating to the above, the Forum has also raised that as polymeric PFAS are not accessible to analytical determination to check this limit value of 50 ppm, PFAS enforcement independent from documentary evidence provided by the manufacturer/importer/downstream user is not possible. Additional documentary evidence on the type of polymers present will always be needed. FPG welcomes this statement, taking also into account that the limit value of 50 ppm is too low.

FPG agrees with the Forum's concerns relating to the fact that **substance identification** is based on structural criteria only and there is no reference to a list of substances or CAS numbers.

Moreover, FPG highlights that the current formulation of the **scope** of the restriction is very unclear, as it doesn't seem to cover the use of mixtures and articles, while substance identification is based on

structural criteria only. The Forum suggests that the wording should change, as it would raise enforceability issues related to the proposed scope.

FPG also finds useful the suggestion of the Forum to develop an indicative list of PFAS covered by the restriction in a future guidance document, to help the enforcement authorities.

On practicability: The proposal would face practical challenges on its enforcement, as it would require significant resources, such as manpower, highly equipped laboratories, and potential new and substantial guidelines from official agencies.

On enforcement costs: The cost of enforcing such a broad restriction would be extremely high, as it concerns a very high number of substances, mixtures and articles. The Forum advice confirmed that the overall costs of enforcement will be significantly higher than for restrictions with a more targeted scope as well as due to the widespread use of PFAS, the difficulties in sampling and expensive analyses and the manpower and expertise requirements.

FPG members are committed to working with EU authorities to establish and implement the technical actions that may be required to guarantee adequate control of the risks derived from the manufacture and use of fluoropolymers, and remove such risks wherever possible, with a strong emphasis on R&D for the continued improvement of the manufacturing process.

Since currently, the 5 Competent Authorities that submitted the PFAS restriction dossier are in the process of updating the background document, FPG supports that this document takes into consideration the above ECHA Enforcement Forum's advice. FPG looks forward to reading the updated background document soon, after it has been publicly available.
