



CHEMTRUST, EEB and IPEN comments to SEAC draft opinion on an Annex XV dossier proposing restrictions on Perfluorohexane sulfonic acid (PFHxS) including its salts and related substances

The undersigning organizations support the restriction of PFHxS as part of the growing global efforts to eliminate all PFAS. PFHxS is extremely persistent, it bioaccumulates and is likely to lead to significant adverse human health effects. However, we consider that the proposed restriction as currently under discussion will have a limited impact on the reduction of PFHxS emissions given the high allowed concentration limits and the proposed derogations.

Concentration limits:

Unfortunately, as with the previous REACH restriction decisions on perfluorinated alkyl substances (PFOA and C9-C14 PFCAs) SEAC's draft opinion supports the concentration limits for mixtures or articles proposed by the Dossier Submitter, 25 ppb (25 µg/kg) for the sum of PFHxS and its salts or 1000 ppb (1 mg/kg) for the sum of PFHxS related substances, as it considers that these values *"provide a balance between the need to prevent intentional use and to minimise emissions, and the availability of analytical methods"*. However, this is based on the PFOA restriction process initiated in 2014 and does not take the developments in analytical methods as well as the rapidly emerging evidence on the health hazard of PFHxS into account. The original PFOA restriction proposal dossier proposed a 2 ppb limit as feasible already in 2014. The SEAC opinion does not provide any data or information as to why the proposed higher limits are relevant for PFHxS.

The SEAC opinion is based on claims (by industry) during the PFOA restriction process regarding the lack of analytical methods to enforce a lower value and does not include a technical or scientific justification on how these limits would best serve the purpose of the restriction such as addressing an unacceptable risk, REACH Art. 68(1), or indeed the higher-level conclusions of the Council of the EU of June 2019 ("to eliminate all non-essential uses of PFAS"). It should be noted that the opinion also states that *"There is no safe concentration for these substances"*, a clear justification for the much lower threshold limit of 2 ppb originally proposed already for PFOA.

The SEAC opinion also states that *"The suitability of the proposed concentration limits was not contested during the consultation of the Annex XV dossier."* Unfortunately, SEAC did not consider the comments on this issue provided by our organisations during the Annex XV dossier public consultation where we highlighted that:

- The limit is too high to avoid intentional use.

The limited set of test results of PFHxS in consumer products presented in the dossier show that PFHxS has been detected in concentrations below 25 ppb/1000 ppb in several samples. The 25 ppb/1000 ppb value mirrors the opinion of the PFOA restriction. However, the dossier submitter of this restriction had originally proposed a value of 2 ppb for PFOA, its salts and PFOA-related substances on its own, in mixtures and articles to avoid intentional use. Lowering of 25/1000 ppb to 2 ppb would substantially reduce the total yearly PFHxS emissions from textiles from 6.3 kg to 0.5 kg, as RAC opinion concludes.

- **Analytical methods to allow enforcement of lower limits are already available.** As stated in the Restriction Report on page 38, "*Analytical methods for the detection of PFHxS are reported in the literature which can be used to measure PFHxS and PFASs in general in almost all environment all media.*" Two methods are highlighted that have a level of quantification of 0.06 ppb. Testing methods have developed rapidly since the PFOA dossier was submitted and there are no constraints today for establishing a threshold of 2 ppb. To put this into perspective, the drinking water limits that have been established in the EU and the US for PFOS, PFOA and some other PFAS are in the 10- 100 ppt range. For example, several states in the US have a combined limit of 70 ppt for five PFAS (including PFHxS) that requires clean-up if exceeded.

Transitional period:

The SEAC opinion agrees with the Dossier Submitter recommendation of a transitional period of 18 months after the entry into force of the proposed restriction. However, it states that "*no intentional uses of PFHxS, its salts and PFHxS-related substances have been identified in the EEA, and the exempted uses of PFOS will be derogated. Substitution activities would not be needed in the EEA*".... Furthermore, SEAC notes that "*such transition period would not have negative impacts on the supply chain because articles already placed on the market would be exempted.*"

Therefore, the need for a transitional period of 18 months is not justified and would only allow importers to increase PFHxS stocks in the EU. In addition, importers have had already several years to prepare for this regulatory action. The restriction intention was already announced two years ago, in April 2018, and several months are still needed for this restriction to enter into force. It was nominated to the Stockholm Convention for global elimination already in 2017. We therefore recommend to abandon the transitional period.

Derogations

SEAC opinion considers that the derogations proposed by the Dossier Submitter are justified for:

- o exempted uses in the PFOS restriction,
- o concentrated fire-fighting foam mixtures already placed on the market,
- o articles already placed on the market.

Concentrated fire-fighting foam mixtures already placed on the market

The Dossier Submitter estimated that the current EU stockpile of fire-fighting foams currently kept at refineries, tank farms, chemical plants and other installations contains around 0.5-3 kg PFHxS. Instead of proposing safe disposal of these foams in line with treatment of any other hazardous waste, SEAC's opinion is to allow their use. Use of fire-fighting foam is one of the most dispersive uses there is of PFAS and this proposal will undoubtedly lead to environmental contamination and increasing the body burden of PFHxS and PFAS overall of EU citizens. This is unacceptable and should be replaced by mandatory producer recalls and safe disposal.

SEAC considers that restricting existing stocks of these foams would be disproportionate, however it states that "*Concerning the costs and benefits of replacing fire-fighting foams containing PFHxS in stock, SEAC notes that the costs have not been estimated in the Background Document of this restriction proposal*". SEAC bases its opinion on the claim that "*earlier experience on costs of replacing AFFF based on PFOA were estimated taking into consideration the amount of fuel needed for the destruction of the foam by incineration.*"

It is unclear how SEAC and the Dossier Submitter come to the conclusion that restricting these foams still in stock would be disproportionate, noting that SEAC does not quantify the benefits of avoiding these releases, for example by estimating the remediation costs for cleaning up the emissions of PFHxS and the significant health costs related to PFAS exposure.

By only looking at industry cost of replacement without taking the wider societal costs, these costs will instead be externalized, which means that it will always be cheaper to release hazardous waste than to destroy or treat it. This is a perspective that hardly fits in the 21st century at a time of the European Green Deal and Europe's ambition to establish a clean circular economy without PFAS!

Exempted uses in the PFOS restriction

SEAC supports the derogation of the exempted uses in the PFOS restriction (use of PFOS in mist suppressants for non-decorative hard chromium (VI) plating in closed loop systems). However it recognizes that *"in accordance with paragraph 9 of Article 8 of the Stockholm Convention, the POPs Review Committee recommended to the Conference of the Parties to the Convention to consider listing and specifying the related control measures for PFHxS, its salts and PFHxS-related compounds in Annex A (elimination) without exemptions."* *"In line with the view of the Commission, SEAC considers that the proposed restriction, and accompanying RAC and SEAC opinions, will contribute to the discussions on the global regulation of PFHxS"*.

It should be noted that the EU was represented at the POPs Review Committee meeting that came to the conclusion that no exemptions were needed. By following the proposed approach in the Draft Opinion, derogations adopted at the EU level would be promoted at a global level. This would weaken the international controls of PFHxS as well as undermine the Stockholm Convention, currently the only legally binding means of controlling unmanageable, hazardous chemicals similar to the EU restriction process. Furthermore, SEAC states in its draft opinion that *"during the consultation, the German Competent Authority indicated that on the market there are fluorine-free, chemical alternatives, e.g. alkane sulfonates, for hard chromium (VI) plating available, as well as effective technical solutions to minimize aerosol emission, e.g. galvanic bath covers or air extraction systems."*

This makes it very clear that the proposal to derogate this use has no technical/economic justification and should be abandoned. Otherwise, it will further allow a highly polluting and dangerous industrial sector such as the chromium VI platers, to continue business as usual, hindering the market for safer alternative providers both at EU and global level.

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