

Response to consultation on SEAC draft opinion regarding PFOA restriction proposal

Brussels, 14 November 2015

DIGITALEUROPE, the association representing the digital technology industry in Europe, welcomes the opportunity to comment on the SEAC opinion on an Annex XV dossier proposing restrictions on Perfluorooctanoic acid (PFOA), PFO salts and PFO-related substances, published on the 10th September 2015.

While PFOA is usually not directly contained in electronic products, Fluoropolymers are base plastic materials used in a wide variety of electronic applications. For these Fluoropolymer applications there are neither alternatives nor substitutes. The original proposal to restrict PFOA and PFOA-related substances at 2 ppb for articles therefore presents a serious concern for our industry.

Thresholds

We acknowledge the fact that SEAC opinion in suggesting a higher threshold for PFOA or its salts and of combinations of PFO-related substances.

We welcome that SEAC has strived to set the thresholds at a level that eliminates the manufacturing, use and placing on the market of long-chain substances while still allowing the manufacturing, use and placing on the market of the essential alternatives.

We however strongly believe that appropriate thresholds should be set based on scientific grounds. Stating that a derogation for fluoropolymers “should not be necessary with the concentration limits suggested”, without providing further data, is in our view not appropriate.

We would like to specifically point to two items that support adopting a higher threshold:

1. **Residual amounts of PFOA in fluoropolymers:** According to the "Perfluorooctanoic Acid (PFOA) and Fluorinated Telomers 2014 Annual Progress Reports¹", fluorinated polymers will contain up to 20 ppm of residual PFOA, far beyond the proposed limit value of 25 ppb.
2. **Inconsistency with EU food contamination risk assessment:** According to the European Food Safety Authority (EFSA), a threshold daily intake (TDI) of 1.5 µg/kg b.w.² is assigned to PFOA. This will correspond to 52.5 ppb when an adult human with body weight of 70 kg consumes 2 kg of foods daily.

We question if concentration limits for general goods such as electronic equipment should be in the same order of that of foods, because exposure from electronic devices will naturally be far lower than exposure from food. In our view more precise risk consideration will be required to determine what threshold is appropriate in the light of risk on human health, in line with Art. 68 of REACH.

In a similar context, the TDI for PFOS is set at 150 (ng/kg b.w.) (ten times less than PFOA). Still the threshold for PFOS is set at 1000 ppm. We question why for PFOA a threshold of 25 ppb is suggested, even if the threshold for a substance with considerable lower TDI is set at 1000 ppm.

1 <http://www.epa.gov/oppt/pfoa/pubs/stewardship/preports8.html> Note: This link is temporary not working because of renewal of EPA website.)

2 Scientific Opinion of the Panel on Contaminants in the Food chain [1] <http://www.efsa.europa.eu/en/efsajournal/pub/653>

Substance identification

If PFOA and its related substances are restricted, we are of the view that all substances considered in scope should be identified and specified by EC or CAS number. This is key for compliance assurance along our global supply chain as well for enforcement purposes for authorities. Without these identifiers it will be very difficult for manufactures of articles and their supply chain to control all the covered substances, which in turn would lead to legal uncertainty.

Transition period

In line with our comments on the restriction proposal, we support the proposal by SEAC to introduce a transition period of at least 36 months. Such a transition period is needed to allow industry sufficient time to comply with new substance restrictions, including the establishment of test methods.

Derogations

We fully support the derogation proposed by SEAC for semiconductor photolithography processes (5.b)). The semiconductor industry uses PFOA or PFOA related substances in very small amounts as a critical ingredient in photolithography chemistry for integrated circuit patterning. We acknowledge that SEAC has taken our comment on this into account.

We also support the derogations included for second-hand articles (6.a)) and for articles produced from recycled articles (6.b). In our view these two derogations support the concept of the circular economy. We are glad to see that our request for a derogation for recycled content has been taken into account.

We also welcome the derogation for spare parts of automobiles (6.d)), applying the “repaired as produced principle”. We however question why the scope of the derogation is limited to cars. Other industries, such as the ICT industry, should be included. Spare parts are designed and specified for the products they serve once placed on the market and need to be available to users in order to extend products’ lifetime via upgrading or repairing operations. We believe that a derogation for spare parts (already produced at the date of entry into force) for all industries and sectors needs to be provided. In case the “repaired as produced principle” is not properly accounted for, we anticipate the following negative impacts for both economic operators and consumers within the European market:

- **Increasing costs for manufacturers:** in most cases spare parts for EEE or their production equipment lack versatility and are specifically made for a specific product. As such, spare parts are manufactured at the same timing of manufacturing parent products and kept in stock considering service parts retention period (generally much longer than 2 years), before the legal restriction comes into effect. For spare parts already in stock before legislation entered into force, manufacturers would need to retroactively confirm with suppliers (who themselves need to confirm upper stream in the supply chain with the raw materials’ supplier) if the substance is present in relevant parts of the product at the given threshold. This will create extra efforts and costs in the supply chain. If a supplier cannot provide retroactive information on materials/parts manufactured in the past, chemical analysis has to be done (which will be destructive and create extra costs).
- **Increasing costs for customers:** if manufacturers have no other choice than re-developing and re-manufacturing spare parts, the additional costs will partly be borne by consumers.
- **Decreasing products lifetime:** in case where costs are too high to be borne by industry and consumers, manufacturers will no longer be in a position to ensure the service and refurbishment of products.

Test methods

Standardized, robustly repeatable, analytical techniques that minimize false positives (e.g. PFOA substitutes or replacements) need to be available in order to comply with and enforce the proposed restriction. Without such methods, both compliance assurance and enforcement will be difficult and ineffective. This is especially important given the large number of restricted substances proposed (PFOA, its salts, esters, and PFOA-like compounds) and the variety of test methods that will have to be employed to ensure compliance with each. Because of the time it will take to develop a robust, standardized test method, we would strongly support a significant phase-in period.

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ABOUT DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 59 corporate members and 35 national trade associations from across Europe. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

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