

EU BROAD PFAS RESTRICTION PROPOSAL PUBLISHED – A COMPLEX AND SIGNIFICANT PROCESS BEGINS

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SUMMARY

PFAS has been on European regulatory radars for some time, but 2023 looks to be a significant year for the EU's broad PFAS restriction proposal. In January, five EU member states submitted the proposal to the European Chemicals Agency (ECHA) under REACH (the EU's chemicals regulation) and, in February, ECHA published the proposal. There's no doubt that the task faced by ECHA and interested parties / consultees will be sizeable as this proposal moves through the restriction process.

A BRIEF HISTORY OF THE BROAD PFAS RESTRICTION PROPOSAL

PFASs are a very large group of chemical compounds / synthetic chemicals widely used in industrial processes, everyday consumer items, etc. Known sometimes as "forever chemicals", PFASs resist degradation – they do not easily break down in the environment, instead building up in / contaminating water and soil. Such contamination has proven difficult and expensive to remediate. There has also been concern that some PFASs may be linked to negative impacts on human health.

With this in mind, PFAS has been on European regulatory radars for quite some time now. There have already been more specific discussions about restricting PFAS use in certain narrow contexts (e.g. fire-fighting foams), but 2023 looks to be a significant year for the EU's **broad** PFAS restriction proposal (which has been in the preparation stage for a couple of years). Now, things appear to be moving forward.

On 13 January 2023, five EU member states (Denmark, Germany, the Netherlands, Norway and Sweden) submitted the proposal to the European Chemicals Agency (ECHA) regarding the broad PFAS restriction (under REACH – the EU's chemicals regulation).

WHERE WE ARE NOW – A FEBRUARY 2023 UPDATE

On 7 February 2023, ECHA published the proposal – stating:

“Now, our scientific committees will start their evaluation and opinion forming. While the evaluation of such a broad proposal with thousands of substances, and many uses, will be challenging, we are ready.”

This statement clearly highlights the scale, complexity and breadth of the proposal.

The current listed scope of restriction is described as – *“Restriction on the manufacture, placing on the market and use of PFASs”* – further indicating the breadth and potential open-endedness of the proposal. In addition, the now published restriction report / dossier is long and complicated, with multiple annexes.

So, there’s no doubt that the task faced by ECHA and interested parties / consultees will be sizeable as this proposal moves through the restriction process.

WHAT HAPPENS NEXT – CONSULTATION, OPINION DEVELOPMENT AND BEYOND

The submission of the proposal constituted the completion of the first stage.

The second stage focusses on ECHA scientific review, consultation and opinion development:

- ECHA’s committees for Risk Assessment (*RAC*) and for Socio-Economic Analysis (*SEAC*) will assess whether the proposal satisfies criteria under REACH in March 2023 and, provided this is the case, will undertake detailed scientific evaluation.
- As things stand, it is expected that a six-month period of open consultation will start on 22 March 2023. Anyone should be able to submit information / have an opinion on the proposal. ECHA has indicated that an online information session will be organised on 5 April 2023 to explain the restriction process and to help those interested in participating in the consultation.
- The *RAC* / *SEAC* committee opinions, normally, are ready within a year of the start of scientific evaluation, but ECHA has warned that, due to the *“complexity of the proposal and the extent of information that is expected from the consultation”*, the opinions may take more time.

The final stage involves the European Commission drafting a proposal, with EU Member States deciding whether to adopt the proposal

Interested parties / consultees should be aware of and considering this process – particularly regarding the upcoming consultation

WHAT ABOUT THE UK?

Brexit is highly relevant in this environmental regulatory area. Regarding chemicals, post-Brexit, UK REACH (rather than EU REACH) is the regulatory framework in Great Britain (EU REACH continues to apply in Northern Ireland).

Noting the UK REACH / EU REACH split, there has been discussion about a divergent / different regulatory approach in the UK relative to the EU regarding PFAS.

The UK is of course aware from a policy perspective of the EU's broad PFAS restriction proposal, but the UK approach (involving a RMOA (regulatory management options analysis) on PFAS) may well end up being different to that of the EU.

However, significant uncertainty remains in this regard and so the ongoing complexities of the UK REACH / EU REACH split will need to continue to be monitored (including regarding PFAS).

RELATED PRACTICE AREAS

- PFAS Team
- Environment

MEET THE TEAM



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