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Restriction of per- and poly-fluoroalkyl substances (PFAS) under REACH

The Federation of Norwegian Industries represents more than 3200 companies with approx. 127,500 employees.

The Federation of Norwegian Industries works for framing conditions for businesses in sectors and industries such as:

Oil and gas contractors, onshore petroleum activities, aluminum, aquaculture and aquaculture suppliers, biotechnology and pharmaceuticals, cement, chemical industries, electro and energy equipment, furniture, glass and ceramics, machine and hardware industry, maritime industry, graphic arts and communication, metals, mining, paints and coatings, plastics, recycling and textiles.

Total annual turnover for the sectors that the Federation of Norwegian Industries represents exceeds approx. NOK 600 billion. Total annual exports have a value of approx. NOK 300 billion.

The Federation of Norwegian Industries and its member companies want to develop sustainable products, and most delivers in a global environment. Hence, it is important that Norway and the rest of Europe have similar regulations and requirements. The Federation of Norwegian Industries takes the issue of PFAS seriously. The industry is currently mapping where these substances are used and where they will remain necessary in equipment production due to lack of qualified alternatives. To enable the substitution of PFAS where there are currently no alternative products and technologies, alternatives need to be developed. This will require time and resources.

The restriction of PFAS could have far reaching impact on industries in Norway. PFAS and their unique properties are used in several industrial processes. Their carbon fluorine bond results in a combination of desirable and unique chemical and physical properties, which makes some groups of PFAS irreplaceable in applications where harsh conditions prevail and where longevity is required. Those characteristics are critical for use in important product applications in many industrial sectors. This includes safety and operational performance. It is the combination of properties present in PFAS based materials that makes them ideal for many applications. Hence, it is extremely difficult to find appropriate alternatives which are also sustainable and longlasting. It is necessary to evaluate the potential overall impact of any replacement substance or technical alternative, overall environmental impact and a ban does not make sense when there are no alternatives available.

A ban could remove critical equipment from the market, become a showstopper for the green transition, and lead to unwanted emissions of other substances from production lines, impair durability, and compromise equipment warranties. PFAS is particularly essential in specialized products for the green transition in energy supply

(battery materials, solar panels, heat pumps, isolation materials, the essential arcing nozzle made from polytetrafluoroethylene in electrical high voltage equipment and membranes in hydrogen production, for example).

The market for manufacturing companies is global, and supply chains for both raw materials and production equipment are as well. It is necessary to involve the supply chains so that necessary production and laboratory equipment can be manufactured, delivered, and have market access within the EU.

The Federation of Norwegian Industries aims to protect the uses that are still needed in the industry, particularly where there is a need for pipe linings and gaskets in virtually all production involving chemicals. Furthermore, PFAS is still necessary in workwear for certain sectors. Workwear with 'necessary PFAS' is used, among other things, for protection against heat/fire (firefighters), water, acids/bases, and grease (employees in the chemical industry and oil production, for example)

It is important to ensure good **transition periods** so that production facilities can continue to be used and products that have already been manufactured and are on the market/in trade can be sold – avoiding unnecessary waste. There are likely no environmental benefits in destroying already produced products. The general period of 18 months is clearly too short for the conversion of all applications for which no exemptions are provided.

The current **derogations** cover just a few PFAS uses in industrial setting for a limited period of time. As PFAS are typically used in several materials, pieces of equipment, such as sealants, coatings on valves and piping, filter materials and membranes and conveyor belts – the phase out could lead to production disruptions. This is also due to the very short timeframe of the proposed derogations. Furthermore, these chemicals are often an integral part of industrial plants and high investments for companies. The possibility to review, extend and reapply for exemptions is urgently needed in view of the technical importance of PFASs.

Products already placed on the market for the first time should be exempted from the restriction. Otherwise, existing stocks of substances, mixtures and articles at downstream users would have to be disposed of, since under REACH every process of making available to third parties is considered as placing on the market.

The restriction proposal is very broad. No structuring or subdivision of the more than 10,000 substances, which have very different intrinsic properties, is apparent. No differentiation that considers the different risk profiles of the substances is made. Instead, a comprehensive ban of the entire substance class is proposed.

In order to enable a legally sound assessment of the affectedness, **the scope** of the restriction must be clearly defined. To analyze the affectedness along global supply chains, a list of substances in scope containing IUPAC names or CAS no. is required. This is the only way to evaluate all affected PFAS uses to avoid supply chain disruptions and ensure that important applications are not unintentionally excluded.

The group based approach of the restriction proposal is legally questionable. According to Art. 69 of the REACH Regulation, a substancerelated approach is prescribed for restrictions. This objection remains relevant even though various other restrictions on groups of substances are included in Annex XVII of the REACH Regulation.

Also, the restriction proposal is not **risk based**, as no risk assessment of individual sub-stances or (at least) individual substance groups with uniform properties has been carried out. Thus, the chosen restriction approach does not meet the requirements of Article 68(1) of the REACH Regulation, which provides that restrictions may be adopted in the presence of "unacceptable risks". Therefore, a restriction of substances in applications that do not pose a risk exceeds the legal framework provided by the REACH Regulation.

The restriction proposal is mainly justified by the persistence of the substances and other possible hazard properties such as mobility or bioaccumulability. The actual risk assessment required by Article 68(1) of the REACH Regulation, which considers not only hazard properties but also exposures from the various uses, has not taken place. For a lawful, appropriate, and proportionate regulation of the substances, a differentiated approach is required. This must take into account the different properties of the substances and include an assessment of whether a PFAS substance or its use poses an unmanageable risk to the environment or human health. In particular, if no environmental exposure occurs in specific applications, a ban is not justified. Safe uses of certain PFAS that cannot be replaced by suitable alternatives must continue to be possible in Europe. Otherwise, the restriction proposal is disproportionate.

Best regards

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