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[...] (2023) **XXX** draft

COMMISSION REGULATION (EU) .../...

of **XXX**

amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council as regards undecafluorohexanoic acid (PFHxA), its salts and PFHxA-related substances

(Text with EEA relevance)

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THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC¹, and in particular Article 68(1) thereof,

Whereas:

- (1) Undecafluorohexanoic acid (PFHxA), its salts and PFHxA-related substances² have a combination of hazardous properties. PFHxA by far exceeds the ‘very persistent’ criterion set out in point 1.2.1 of Annex XIII to Regulation (EC) No 1907/2006, is mobile in the aquatic environment and has potential adverse effects on human health and the environment. PFHxA itself is not registered or used in the Union. Several PFHxA-related substances as well as the ammonium salt of PFHxA are registered in the Union with tonnage bands from 1 to more than 100 tonnes per annum. PFHxA-related substances and the ammonium salt of PFHxA are widely used in many sectors, with large quantities used in paper and cardboard for use as food contact materials, in textiles and in firefighting foams. The continued use of PFHxA salts and PFHxA-related substances in wide dispersive uses will lead to an increasing environmental stock and further environmental and human exposure.
- (2) On 20 December 2019, Germany submitted to the European Chemicals Agency (‘the Agency’), a dossier³ pursuant to Article 69(4) of Regulation (EC) No 1907/2006 (‘the Annex XV dossier’) proposing to restrict the manufacture, use and placing on the market of PFHxA, its salts and PFHxA-related substances on their own, and to restrict their use in the production of and placing on the market in another substance, as a constituent, in a mixture or in an article or their use in another substance, in a mixture or in an article, with a general transition period of 18 months. In order to address the risks to human

¹ OJ L 396, 30.12.2006, p 1.

² PFHxA-related substances are substances that, based on their molecular structure, are considered to have the potential to degrade or be transformed to PFHxA. A non-exhaustive list of substances belonging to the scope of the restriction proposal is available on the website of the European Chemicals Agency: <https://echa.europa.eu/documents/10162/7da473c1-7f27-df34-9e6a-46152ef10d4b>

³ <https://echa.europa.eu/documents/10162/c4e04484-c989-733d-33ed-0f023e2a200e>

health and the environment, Germany proposed concentration limits of 25 ppb for the sum of PFHxA and its salts, and 1000 ppb for the sum of PFHxA-related substances.

- (3) In addition, both time-limited and non-time-limited derogations were proposed by Germany for certain uses taking into account the socio-economic impact and the availability of alternatives. For the use of PFHxA, its salts and PFHxA-related substances in firefighting foams, Germany proposed a reporting obligation for a natural or legal person benefitting from the proposed derogations.
- (4) On 3 June 2021, the Agency's Committee for Risk Assessment ('RAC') adopted its opinion concluding that it has not been demonstrated that the restriction on PFHxA, its salts and PFHxA-related substances as proposed by Germany is the most appropriate Union-wide measure to address the identified risks. Nevertheless, RAC considers that a broad Union-wide restriction with carefully considered targeted derogations and transition periods is the most appropriate Union-wide measure to address the identified risks in terms of effectiveness, practicality and monitorability.
- (5) RAC supported the restriction as proposed by Germany regarding the uses where it is not possible to implement risk management measures to minimise emissions, especially wide dispersive consumer uses in food contact materials, in textiles as well as in firefighting foams used for municipal firefighting, which comprise three major emission sources. However, based on the limited information available on the conditions of use and the effectiveness of risk management measures, RAC could not conclude on whether certain other uses contribute to the identified risks, such as chrome plating and firefighting foams used at industrial installations. For those other uses, the uncertainties around the current conditions of use and effectiveness of risk management measures are too large to conclude that the restriction as proposed by Germany was the most effective risk management option.
- (6) Furthermore, RAC did not support the justification for most of the derogations as proposed by Germany as there was insufficient information available to conclude that releases from those uses were minimised. However, in the event that a restriction would be imposed, RAC supported derogations for the following uses as credible information on the minimisation of releases from those uses was available: semiconductors and semiconductor related equipment, epilame in watches, coating for hearing devices, implantable medical devices and transported isolated intermediates.
- (7) RAC agreed with the concentration limits and general transition period as proposed by Germany. RAC also noted that standard analytical methods for the substances and matrices within the scope of restriction as proposed by Germany are required to be developed. However, RAC concluded that, in general, analytical methods are commercially available to monitor exposures and the implementation of the restriction as proposed by Germany.
- (8) On 8 December 2021, the Agency's Committee for Socio-Economic Analysis ('SEAC') adopted its opinion concluding that it has not been demonstrated that the restriction on PFHxA, its salts and PFHxA-related substances as proposed by Germany is the most appropriate Union-wide measure to address the identified risks, taking into account its socio-economic benefits and costs. SEAC considered that a restriction on PFHxA, its salts and PFHxA-related substances is, in general, an appropriate measure to address the identified risks. However, based on the limited available information on socio-economic impacts and emission estimates, SEAC could not conclude whether the conditions of the restriction, as modified by SEAC, are, as a whole, the most appropriate measures to address the identified risks. Nevertheless, SEAC concluded on the socio-economic

benefits and costs of a restriction for certain uses, where information on socio-economic impacts was less uncertain. SEAC took into account RAC's conclusions on effectiveness of risk management measures and the minimisation of emissions, the irreversibility of emissions of PFHxA to the environment, the information available on alternatives, the possible functional losses and socio-economic impacts. SEAC concluded that restricting the uses in consumer apparel textiles, firefighting foams in municipal and mobile firefighting, paper and cardboard as food contact materials and consumer mixtures is likely not an inappropriate measure, in terms of its socio-economic benefits and its costs, to address the risk, and that restricting the use in cosmetic products is likely an appropriate measure, in terms of its socio-economic benefits and its costs, to address the risk.

- (9) SEAC did not agree with the proposed general transition period of 18 months. SEAC considered that the transition period should be long enough to ensure that producers, importers and users of substances, mixtures and articles are able to comply with the restriction and adapt their operations to allow for the phasing-out and substitution of PFHxA, its salts and PFHxA-related substances and to allow for adaptations within the affected supply chains. Therefore, SEAC proposed a general transition period of 36 months.
- (10) The Agency's Forum for Exchange of Information on Enforcement, referred to in Article 76(1), point (f), of Regulation (EC) No 1907/2006, was consulted during the restriction process and its opinion has been taken into account. SEAC noted the Forum's opinion that the restriction as proposed by Germany can be regarded as enforceable, as long as it is clear which substances are in the scope of the restriction and that reliable normative test methods are defined covering all types of regulated substances.
- (11) On 10 May 2022, the Agency submitted the opinions of RAC and SEAC⁴ to the Commission.
- (12) Taking into account the Annex XV dossier and the opinions of RAC and SEAC, the Commission considers that an unacceptable risk to human health and the environment arises from the use and placing on the market of PFHxA, its salts and PFHxA-related substances in certain mixtures and in certain articles, which needs to be addressed on a Union-wide basis.
- (13) The Commission considers that it is not demonstrated that the proposed restriction, as modified by RAC and SEAC, is the most appropriate Union-wide measure to address the identified risks, taking into account that the data presented on emissions, risk reduction and socio-economic impacts are uncertain ~~and important data are missing~~. RAC clearly indicated that the reported quantitative release estimates are unreliable due to numerous inconsistencies between different sections of the Background Document to the Opinion on the Annex XV dossier⁵, insufficient justifications for the assumptions made and significant gaps in the information presented or in the reporting of the underlying calculation methodology for the different use sectors.
- (14) Despite the existing uncertainties on the data available, the Commission concurs with RAC that releases to the environment and exposure to humans have been confirmed by a large set of environmental and human monitoring data, and that the manufacture of PFHxA, its salts and PFHxA-related substances, and the uses of those substances that result in releases to the environment that are not adequately controlled, should be

⁴ <https://echa.europa.eu/documents/10162/97eb5263-90be-ede5-0dd9-7d8c50865c7e>

⁵ <https://echa.europa.eu/documents/10162/5c011606-5891-d26a-03e7-ceba0a35126f>

minimised. Instead of a broad restriction, the Commission considers a targeted restriction as the most appropriate Union-wide measure to address the identified risks. The Commission considers that the restriction should be targeted to those uses for which RAC concluded that it is not possible to implement risk management measures to minimise emissions and SEAC concluded that restricting that specific use is likely appropriate or likely not inappropriate in terms of socio-economic benefits and costs. For those uses, the Commission considers that the risk is not adequately controlled, alternatives are available and socio-economic costs are likely to be limited in comparison to the human health and environmental benefits.

- (15) Therefore, the Commission considers it necessary to adopt a Union-wide restriction for placing on the market or use of PFHxA, its salts and PFHxA-related substances in textiles, leather, furs and hides in clothing (such as outdoor clothing like rain jackets); related accessories (such as handbags) and footwear for use by the general public; paper and cardboard used as food contact materials; mixtures for use by the general public; cosmetic products; and some firefighting foams applications.
- (16) Although SEAC could not conclude on the magnitude of socio-economic costs in relation to the benefits for textiles, leather, furs and hides other than in clothing and related accessories for use by the general public, the Commission considers that the use in those materials should also be restricted because there are indications that considerable amounts of PFHxA-related substances might be used; it is a wide dispersive use where the risk is not adequately controlled; emissions cannot be minimised by the application of risk management measures, as concluded by RAC; and alternatives for water repellent properties appear to be available. Those product types concerned include carpets, rugs, curtains, blinds, upholstery, textile wall covers and other textile-based coverings (such as tablecloths or bed linen). The restriction covers those products that are supplied directly to the general public, but also those products that are used by the general public in a private capacity or in the context of a service provided to the general public. This includes the use of the product types concerned in automotive, aviation and other public places, as well as in offices as it can be assumed that those offices are visited by the general public. Textiles used as building materials or construction textiles are exempted. For those restricted product types, it has not been well established that the lack of oil and stain repellent properties would lead to functional losses with significant negative impacts. Given the possible socio-economic impacts related to functional losses where alternatives do not provide sufficient oil and stain repellence, a longer transition period for textiles other than in clothing and related accessories for use by the general public is considered to be justified.
- (17) On 14 January 2022, the Agency submitted on behalf of the Commission a dossier⁶ pursuant to Article 69(1) of Regulation (EC) No 1907/2006, proposing to restrict the manufacture, placing on the market and use of per- and polyfluoroalkyl substances (PFAS) in firefighting foams. PFHxA, its salts and PFHxA-related substances are in the scope of that restriction proposal. The Commission considers that a decision on restricting the use of PFHxA, its salts and PFHxA-related substances in most firefighting foams uses is more appropriately reached based on the restriction dossier for all PFAS in firefighting foams. However, given that alternatives are widely available and already in use for PFHxA, its salts and PFHxA-related in firefighting foams used for training and testing, for municipal-public fire services and for civil aviation, the Commission considers that restricting those uses should not be delayed.

⁶ <https://echa.europa.eu/documents/10162/4524f49c-ae14-b01b-71d2-ac3fa916c4e9>

(18) On duty, local fire services may face different types of fires and establishments. To take into account the variability in the organisation of public fire services in all Member states and to ensure a high level of fire safety, the placing on the market and use of PFHxA shall be derogated for use in industrial settings by those public fire services.

(17)(19) The Commission notes that uses not covered by this targeted restriction, are included in two other pending restriction dossiers, notably per- and polyfluoroalkyl substances (PFAS) in firefighting foams⁷ and PFAS in all other uses⁸. The need to restrict those uses will be further considered based on the justification provided in those dossiers.

(18)(20) The Commission agrees with the concentration limits as proposed by Germany, RAC and SEAC.

(19)(21) The Commission considers that a derogation for any substance having a perfluoroalkyl group C₆F₁₃-directly attached to a sulphur atom (PFHxS, its salts and related substances) should be provided for, since those substances are restricted by Regulation (EU) 2019/1021 of the European Parliament and of the Council⁹.

(20)(22) The Commission agrees with RAC and SEAC that substances having a perfluoroalkyl group C₆F₁₃- directly attached to an oxygen atom at one of the non-terminal carbons should be excluded from the scope of substances subject to the restriction since those substances cannot be transformed into PFHxA. Their chemical structure is such that a degradation to a carboxylic acid or to a carboxylate would form two separate shorter fluoroalkyl chains, the hazards and risks of which were not assessed in the Annex XV dossier.

(21)(23) Stakeholders and Member States should be allowed sufficient time to take appropriate measures to comply with the restriction. Therefore, taking into account the suggestions from the Annex XV dossier, as well as RAC's and SEAC's considerations, the application of the restriction should be deferred for 18 months for firefighting foams used in training, testing and municipal-public fire services [, except for use in industrial settings]; 24 months for textiles, leather, furs and hides in clothing and related accessories and footwear for use by the general public, paper and cardboard used as food contact materials, mixtures for use by the general public and cosmetic products; 36 months for textiles, leather, furs and hides other than in clothing and related accessories for use by the general public; and 5 years for firefighting foams used in civil aviation.

(22)(24) The restriction should not apply to articles placed on the market prior to the respective date of application of the restriction, for practicality and enforceability reasons.

(23)(25) Regulation (EC) No 1907/2006 should therefore be amended accordingly.

(24)(26) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

⁷ <https://echa.europa.eu/documents/10162/4524f49c-ae14-b01b-71d2-ac3fa916c4e9>

⁸ <https://echa.europa.eu/documents/10162/1c480180-ece9-1bdd-1eb8-0f3f8e7c0c49>

⁹ Regulation (EU) 2019/1021 of the European Parliament and of the Council of 20 June 2019 on persistent organic pollutants (OJ L 169, 25.6.2019, p. 45).

HAS ADOPTED THIS REGULATION:

Article 1

Annex XVII to Regulation (EC) No 1907/2006 is amended in accordance with the Annex to this Regulation.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission
The President
Ursula von der Leyen*