COMMITTEE FOR EUROPEAN
CONSTRUCTION EQUIPMENT

POSITION PAPER

Brussels, 17 May 2023

CECE comments regarding the PFAS restriction proposal and ECHA's Public Consultation

CECE welcomes the opportunity to provide input to the public consultation organised by European Chemicals Agency (ECHA) on a PFAS restriction proposal. In October 2021, CECE contributed input to the second public consultation on a restriction for PFAS organised by the competent authorities for REACH of the Netherlands, Germany, Denmark, Sweden, and Norway. Having regard to the PFAS restriction proposal and to the public consultation procedure, we would like to raise the following concerns and points of improvement.

1. Comments on the method underpinning the PFAS restriction proposal

In view of the magnitude of this restriction proposal that provides for a ban on manufacture, use and placing on the market of over 10,000 PFAS, an amendment to the restriction procedure under REACH would have been appropriate in order to allow for a longer stakeholder consultation. Evidence gathering being a demanding process, especially when it comes to identifying uses throughout the supply chains and having potential alternatives assessed by the experts in those supply chains, CECE is of the view that a six-month stakeholder consultation falls short of the impact of the PFAS restriction proposal. Few manufacturing companies will be able to accurately report on content of PFAS in all their forms throughout their supply chains given the short deadline[1].

Due to their performance enhancing properties, the applications of PFAS are often considered commercially sensitive and therefore confidential. Thorough research and collaboration is needed to collate this level of information through multiple levels of complex supplier relationships[2] to be submitted as credible stakeholder comments drawing on an accurate and robust evidence base. In

[1] There is no legal requirement under REACH to report full material content. The majority of suppliers only report the presence of Substances of very high concern (SVHC) if those are present above the threshold of 0.1% w/w.

[2] There are no commercially available means to test articles for PFAS, so rolling up information from the root of the supply chain is the only method available.

anticipation of a PFAS phase-out of a similar scale, a first review in our industry estimates that the identification process of PFAS would span over 38 months[3]. As there is still time to extend the stakeholder consultation, CECE calls upon the Commission and the co-legislators to amend the REACH Regulation in force in order to significantly extend it.

As regards the 18-month transition period for a ban without derogation, the time given to carry out the necessary verification and validation of complex articles to ensure safe and durable products are placed on the market is unrealistic. A realistic time scale must be provided that takes into consideration any availability and integration of alternatives. In comparison, a 42-month transition period is provided for in the Machinery Regulation. Our industry estimates that the testing and validation of alternative substances phase would take approximately three years.

It is unfortunate that circularity constitutes the blind spot of this restriction proposal. There is no feasible alternative to the use of these elements in many applications. PFAS have been selected precisely for their durability and reliability which contribute also substantially to the safety of products. In cases where an alternative can be proposed, processes of bench and other performance and durability testing takes months, if not years, to confirm its characteristics for the manufacturing companies' applications. Components designed for our sector need to be validated by vibration, temperature, functional safety and other tests to withstand harsh operating environments.

Moreover, in the interest of the second life of products and their re-use, re-sell and re-manufacture, the Dossiers Submitters should have factored the revision of Ecodesign Directive and its subsequent non-legislative acts into the PFAS restriction proposal. The coherence of the EU regulatory framework governing circularity should thus be prioritized. It is also regrettable that availability of spare parts, remanufacturing and (due to shortened component lifetime) excess waste were neglected in this restriction proposal.

Furthermore, using the one-ban-fits-all approach on a hugely diverse group of PFAS with varying risk profiles creates a disproportioned burden for a huge portion of the supply chain. Certain trade associations such as Plastics Europe's Fluoropolymers Product Group (FPG) are of the view that the various toxicologic profiles of PFAS should be taken into consideration. For instance, concerns of persistence can be adequately addressed by means of responsible manufacturing and End of Life (EoL) risk-management practices[4] in lieu of a total ban.

2. Comments on sector-specific restrictions

CECE regrets that the selection of sectors granted a derogation was conducted with little regard to the industrial reality of the use of products. For instance, unlike the automotive industry, the non-road mobile machinery (NRMM) sector will not benefit from a derogation under this restriction proposal whereas it can demonstrate similar usages of many complex products in addition to sharing the same

[3] AEM, 2023, *The Essential Societal Benefits of Per- and Polyfluoroalkyl Substances in Non-Road Equipment* (Accessible upon request only)

[4] https://fluoropolymers.plasticseurope.org/application/files/8716/7991/0281/21_March_FPG_Statement_on_the_PFAS_REACH_restriction_report.pdf

supply chain. NRMM should therefore be included in all derogations granted to the automotive industry.

NRMM use high-pressure, high-temperature hydraulic systems and combustion engines which require durable, heat-and chemical resistant seals and hoses. As of today, none of the available non-PFAS rubber materials meet the performance requirements of our applications. Leakages in pressurized systems are a hazard to the environment and to the safety of users. Therefore, it is of key importance that seals and hoses meeting the high-performance and safety requirements of the applications remain available until viable alternatives are discovered.

F-gases – which are also containing PFAS, are vital for the cooling of operator stations and temperature management of battery packs. Non-PFAS alternatives generally have higher risk profiles, e.g., by operating at higher pressures (CO_2) or the refrigerants being more flammable (e.g. propane). Transitioning to new technologies requires a sufficient amount of time and the proposed 18-month timeframe, as stated above, will not be adequate.

Against the backdrop of REPowerEU, electrification and other alternative energy sources are a growing need in the construction machinery sector and the use of battery-powered machines is rapidly expanding in the European market and globally to tackle NOx, PM and CO_2 emissions[5]. Materials containing PFAS are known to be used in engines, batteries and fuel cells. Therefore, all these alternative energy sources ought to have been covered by a derogation. We believe that the PFAS restriction proposal should consider those needs and facilitate the deployment of green technologies in view of EU's Green Deal targets.

CECE will continue elaborating its input in collaboration with its members and strives to actively contribute to the stakeholder consultation as well as to submit feedback on the draft opinion of its Socio-economic Analysis Committee (SEAC) later this year. As stated before, we believe that a longer period is needed to provide the information necessary to come to a targeted, balanced and proportionate ban of the most harmful PFAS. Our industry sector is committed to provide the necessary evidence and allocate the resources needed.

About CECE
CECE, the Committee for European Construction Equipment, represents the interests of 1,200 construction equipment manufacturers through national trade associations in Europe.
CECE manufacturers generate €40 billion in yearly revenue, export a sizeable part of the production, employ around 300.000 people overall. They invest and innovate continuously to deliver equipment with highest productivity and lowest environmental impact.
Efficiency, safety and high-precision technologies are key. See also www.cece.eu

[5] The Netherlands being one of the initiators of the PFAS restriction proposal, it is also one of the countries with pressing, ambitious targets to reduce NOx, PM and CO2 emissions from construction equipment. A ban on PFAS used in the technologies needed would render their targets unrealistic.