

# Position paper European Solar Shading Organisation on ECHA's restriction proposal of PFAS

11 September 2023

Our organisation ES-SO (European Solar Shading Organisation) and its members welcome the objectives of the restriction proposal submitted to ECHA by Denmark, Germany, the Netherlands, Norway and Sweden to reduce PFAS emissions. This initiative will require a significant shift for all European industry sectors but will on the long run benefit people's health and the environment.

Following the publication of Annex XV Restriction Report version 2, published 22 March 2023, ES-SO has identified multiple areas of our manufacturing processes which would be potentially impacted by such a restriction.

We would like to use the opportunity given by this public consultation to provide feedback for our specific downstream sector which – as opposed to PFAS chemical substance producers and more upstream industries – have extremely limited knowledge of where PFAS might be incorporated in materials or products purchased from suppliers, have no knowledge of what truly viable alternative substances may (or may not) exist for our use cases and, in the event that they do exist, do not have enough time to follow a correct process of investigating and testing to ensure they are suitable and if so, to sourcing such alternative substances.

We also want to remind ECHA that our construction sector is under high pressure to immediately deliver long-lasting products for new build and renovation to ensure the decarbonization of the European building stock. This strategic objective (detailed in the Fit for 55 Package) requires to maintain (and even increase) the production capacity of our industry over the next years, and we must ensure that any significant change in our manufacturing processes is carefully introduced to avoid major reduction in production.

The below paragraphs provide insights and suggestions on how to tackle this transition towards a European restriction of PFAS.

## 1) Scope of restriction

The current restriction proposal of PFAS does not provide an exhaustive list of EC/CAS numbers, de facto preventing a clear identification for the downstream industry through suppliers. Furthermore, not all PFAS falling under the restriction proposal represent an

unacceptable risk for human health or the environment (e.g. PVDB<sup>1</sup> coating of aluminum profiles) according to Art. 68 of REACH.

The REACH regulation provides the legislative framework to ensure that all stakeholders throughout the value chain are informed about the presence of specific chemicals – provided that they are registered under specific numbers in the REACH database.

Potential concerns related to the production and end-of-life phase should not lead to an immediate, blanket ban but should rather be addressed by other regulatory measures.

Proposal:

The restriction should propose a more specific list of groups of PFAS with an associated prioritisation based on their criticality and options for substitution. Such identification should then be used to enforce mandatory warnings and other such information throughout the supply chain.

2) **Implementation, transition and derogation**

Our solar shading industry primarily consists of SMEs who assemble a large amount of components (typically 200+ elements for a roller shutter, a roller blind or a venetian blind - see EN 12216 Standard for all products) typically purchased from external suppliers. Given our industry consists of SMEs the timeline under restriction proposal R01 is impossible to achieve and places an unnecessary burden on these businesses.

As highlighted in 1), an exhaustive list of the specific PFAS in scope is needed to conduct an accurate evaluation of the substances contained in the materials and components from our supply chain.

We therefore consider that questions raised by this public consultation greatly underestimate the task for manufacturers and importers of complex articles to perform a preliminary assessment, identify alternatives, research and test those alternatives, and submit information to the requested level of detail. The access to relevant data on PFAS is currently not secured for our downstream industry and quantified feedback can only be given by PFAS producers or upstream users.

Furthermore, like other segments of the building sector, the solar shading industry relies on a large amount of tests, certifications and authorisations from internal and external control bodies. Any significant modification to existing products triggers a series of evaluations that must be conducted before placing new products on the market. Those evaluations usually

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<sup>1</sup> CAS 24937-79-9 ([link](#))

take several years and are therefore incompatible with an immediate restriction of PFAS for this type of industry.

The maturity of technical alternatives in specific areas creates an additional challenge to meet the restriction proposal's deadlines.

Proposal:

Due to the particular nature of our downstream industry, we recommend that a derogation is granted for complex construction products like solar shading, and that this derogation is streamlined within the value chain to avoid a shortage of raw materials or components. Meanwhile, we also recommend to introduce – as soon as possible – a mandatory top-down share of PFAS information in the value chain to enable the needed due diligence for the downstream industry.

### **3) Existing stock/Spare parts**

The solar shading industry is organised in such a way that a large amount of stock is held by SMEs in the assembly and distribution of the finished product. Some of those stocks can be kept for many years due to low demand (e.g. specific types/colours of fabric for blinds).

This is specifically true for spare parts, which constitute a critical aspect of the solar shading industry to provide long-lasting and resource efficient products.

The restriction proposal currently ignores issues regarding the availability of spare parts or components/materials already on the market (in stock) at the time of introduction of the PFAS restriction, knowing that those spare part components/materials can remain in stock for many years.

In this particular context, a derogation for spare parts and products placed on the market prior to the effective date of use is critical to optimise material use, avoid premature obsolescence, avoid unnecessary waste, and ensure compliance with required product longevity. The concepts of 'right to repair' and allowing resale of pre-owned products have been broadly incorporated into other EU substance restrictions, and other EU REACH restrictions, and it is essential to incorporate them into the EU PFAS restriction to avoid major market disruptions. A lack of derogations for spare parts and products intended for reuse would be in direct conflict with the goals of the European Green Deal on resource efficiency and circular economy.

Proposal:

Articles previously purchased by manufacturers or retailers (already in stock), include spare parts or components used for manufacturing future solar shading systems, should be excluded from the restriction's scope.

Existing stocks of materials/components should be allowed to be used for manufacturing and placing on the market new products, even after the restriction comes into force.

#### 4) Level-playing field / Market surveillance

Given the broad scope of the restrictions and the absence of identifiable CAS numbers for substances in scope, the thresholds imposed by this restriction would de jure prohibit the production of components and finished products, as well as their import.

It will be in practice impossible to ensure that products containing PFAS above a certain threshold are stopped on EU's border, especially if these substances are present in imported finished products.

Similarly, ensuring that products are manufactured responsibly and determining which substances are used for their production would be extremely challenging.

Moreover, currently there is a lack of standardisation on test procedures for all possible PFAS substances. Market surveillance authorities would be left without tools for controlling products placed on the market.

If the proposal is implemented as written, the EU risks technology transfer and loss of technological sovereignty to other producing countries, without any environmental benefit as the regulatory framework for industrial emissions in many other countries is not comparable to the ones applicable in the EU.

Proposal:

Before entry into force of the PFAS restriction regulation, methods to test PFAS substances should be available and harmonised across Europe. This will allow market surveillance to make sure that products containing PFAS above a certain threshold are stopped at the EU border.

We remain at your disposal for any questions you may have concerning this document.

Yours faithfully,

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