

Your Voice In Europe: ROADMAP feedback for Recast of Persistent Organic Pollutants (POPs) Regulation 850/2004

User's data:

- Domain: Company/Business organisation
- Name: Gustavo Gonzalez-Quijano
- Email: cotance@euroleather.com
- Country: Belgium
- Organisation: COTANCE
- Headquarter: France
- Register: 077706416598-79
- Size: Micro (< 10 employees)
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Related document: Recast of Persistent Organic Pollutants (POPs) Regulation 850/2004

Feedback:

I represent the European Tanners Association and I would be grateful if you could help us with a brief clarification on Regulation (EC) No. 850/2004 on persistent organic pollutants ("POP Regulation").

In particular, some of our associates, operating in the tanning sector (precisely, in the field of the production of leather), have to deal with certain issues of contractual nature, concerning the verification of the concentrations of Perfluorooctane sulfonate ("PFOS") and Perfluorooctan Sulfonic Acid (PFOA) contained in leather supplied to their clients.

We are aware of the characteristics and the dangerousness of the substances at issue. Also, we understand that the European Union has restricted the use of PFOS since 2006 with the Directive 2006/122/EC and of both with the Regulation EC 1907/2006 ("REACH").

Since 2010, with the Regulation 757/2010 EC the PFOS have been included in Annex I to POP Regulation while PFOA is been included in the Stockholm convention in 2015 (so it is a candidate to be included in the POP regulation).

Therefore it is not possible (it won't be possible for PFOA in the future) to place on the market semi-finished products or articles, in which the concentration of PFOS is higher than 0.1 % by weight calculated with reference to the mass of structurally or micro-structurally distinct parts that contain PFOS or, for textiles or other coated materials, if the amount of PFOS is higher than 1 µg/m².

In this respect, it is worth noting that there is a significant difference between the REACH Regulation and the POP Regulation. REACH prohibits the use of specific substances. On the other hand, the POP Regulation prohibits the placing on the market of articles that contain a concentration higher than a certain threshold, since the concentration up to said threshold is considered "unintentional".

I understand that a "non-intentionality use" for articles refers to a threshold of 0.1%, which might occur, by way of example, in case of background environmental contamination (or may be caused from other factors). In any event, the risk of sanctions, in case of placing on the market contaminated articles, is a main concern of producers and clients and, at the same

time, the need to establish valid criteria to apply the correct threshold of PFOS/PFOA contained in leather creates major contractual problems.

On the other hand, when the aforementioned limits were included in REACH, the Commission – in the document of 22 January 2010 “Questions and agreed answers concerning the implementation of Annex XVII to REACH on the restrictions on the manufacturing, placing on the market, and use of certain dangerous substances, mixtures and articles” – expressed its opinion regarding the interpretation of those limits. In this regard, the Commission maintained that, in coated materials, the coating is micro-structurally different from the rest of the material. Thus, only in relation to textiles, the assessment of concentrations of PFOS/PFOA should have been conducted having regard to the concentration per m², because in this case it would be extremely difficult to operate a separation of the coating from the rest of the material.

In our opinion, leather cannot be included in the “coated material” category: in fact while textiles have per se a bi-dimensional structure, so they can be approximated to a surface and the concentration can be related to square-meters, leather has a tri-dimensional fibrous structure.

Moreover, if the value of PFOs has to be transposed to the surface area in case of unintentional contamination of leather, the thickness of leather would be a factor that makes that the article complies or fails the legal requirement. The thickness of leather is made to customers specification by splitting and shaving the tissue. Transposing the PFO contamination on the surface of leather would therefore not be a valid parameter, as it would discriminate between leathers for reasons that are not in the spirit of the law.

As any intentional use is to be excluded, any contamination has only to be ascribed to “impregnation” factors and not to a surface treatment, so that these pollutants will be distributed inside the whole fibrous structure.

In light of the above, I would kindly ask you to reply to the following question: is it possible to include a specific definition in the POP regulation that clarifies that leather is not a “coated material” and that the PFOs/PFOAS contamination should not be transposed to the surface area. Leather is a tri-dimensional material and it has to be considered an article micro-structurally distinct to any eventual coating.