

TOXIC AND HAZARDOUS SUBSTANCES LITIGATION

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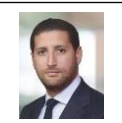
PFAS regulation and litigation are accelerating across France and Europe, with industrial operators increasingly facing claims over historical activities that were lawful at the time, even as scientific knowledge, regulatory thresholds and testing methods continue to evolve. Establishing causation remains a central challenge because PFAS may originate from multiple sources and environmental pathways, while reliable reference values and the regulatory framework are still developing. Ultimately, courts and regulators will need to balance environmental and public-health objectives with technological feasibility and legal certainty, particularly as Europe considers broader PFAS restrictions despite the limited availability of viable substitutes for certain applications.

PFAS in France and Europe: A Fragmented Regulatory Framework and a Growing Wave of Litigation

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ABOUT THE COMMITTEE

Member participation is the focus and objective of the Toxic and Hazardous Substances Litigation Committee, whether through a monthly newsletter, committee Community page, e-mail inquiries and contacts regarding tactics, experts and the business of the committee, semi-annual committee meetings to discuss issues and business, Journal articles and other scholarship, our outreach program to welcome new members and members waiting to get involved, or networking and CLE presentations significant to the experienced trial lawyer defending toxic tort and related cases. Learn more about the Committee at www.iadclaw.org. To contribute a newsletter article, contact:



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Introduction

Per- and polyfluoroalkyl substances ("PFAS") comprise a large group of synthetic chemicals that have been lawfully used for decades in industrial processes and consumer products due to their water-, grease- and heat-resistant properties.

Although concerns about the persistence of PFAS in the environment and their potential impact on human health have been debated for a while, notably in the United States, European regulators have only recently showed an interest in them. This explains why PFAS are currently at the center of increasing regulatory and litigation scrutiny across Europe.

In 2025, France took a pioneering approach by adopting a set of restrictions, complementing the existing EU REACH framework, through Law No. 2025-188 of 27 February 2025 aimed at protecting the public from risks associated with PFAS.

In 2026, the first product recalls based on exceedances of regulatory PFAS limits have been observed (including notably adult hiking shoes and clothing for babies and adults), together with an increase in inspections carried out by the French Directorate General for Competition Policy, Consumer Affairs and Fraud Control (DGCCRF).

In parallel with this belated tightening of PFAS-related restrictions, a growing body of

litigation has emerged, increasingly directed at industrial operators for alleged conduct that were neither prohibited nor specifically regulated. Collective criminal complaints against unknown persons have been filed in several French municipalities, reflecting the determination of affected residents, local authorities, and associations to identify the sources of contamination, assess pollution levels in soils and among exposed individuals. The allocation of the costs associated with PFAS contamination remains one of the central unresolved issues.

The regulatory, scientific, and litigation landscape therefore continues to develop progressively as scientific knowledge advances, and courts begin to address these emerging disputes on a case-by-case basis, in the absence of a clear and fully developed regulatory framework.

PFAS-related investigations and disputes in France

In France, PFAS-related litigation is developing at a fast pace, with claims against industrial operators becoming increasingly diverse notwithstanding the compliance of these operators with the applicable regulations. While the first proceedings primarily targeted industrial sites traditionally associated with PFAS use, such as facilities located in the Lyon Chemical Valley, litigation is now extending to other sectors of activity.

- **Litigation Arising from Industrial Sludge Spreading**

Following the proceedings brought against Daikin and Arkema in the Lyon Chemical Valley, further litigation has emerged, particularly in the Ardennes and Meuse regions, in connection with PFAS contamination allegedly resulting from the land application of industrial sludge.

Given the diffuse nature of this contamination, collective criminal complaints against unknown persons (*plainte contre X*) have been filed by residents of the affected municipalities, environmental associations, and the municipalities themselves.

These proceedings are intended not only to assess the potential health impacts of the contamination through environmental sampling and testing, but, more importantly, to establish a causal link between the contamination and its source.

Beyond the environmental aspects, these proceedings may also have significant civil liability implications. The alleged contamination could give rise to claims for economic losses, including restrictions on the marketing of agricultural products, limitations on the use of drinking water, and, in some cases, alleged health impacts.

- **Litigation Arising from the Use of Firefighting Foam**

Further litigation has also emerged in connection with the historical use of PFAS-

containing firefighting foams, particularly around the EuroAirport Basel–Mulhouse, where firefighting foams were used over many years. The contamination is alleged to have affected surrounding soil and groundwater, with several neighboring municipalities no longer permitted to use their drinking water due to PFAS concentrations exceeding the applicable regulatory limits.

Against this background, a criminal complaint has been filed. As with other PFAS-related disputes, the proceedings are expected to focus on trying to establish a causal link between the alleged contamination and the historical use of PFAS-containing firefighting foams, while determining who should ultimately bear the costs of remediation.

PFAS-related investigations and disputes in Europe

PFAS-related litigation is becoming increasingly established across Europe and is no longer limited to traditional environmental liability claims. The cases emerging across Member States reflect different litigation strategies and legal objectives.

A first category consists of civil and commercial proceedings seeking compensation for the consequences of alleged PFAS contamination. These claims may be brought by individuals, businesses or public authorities and concern a wide range of alleged losses, including personal injury, environmental remediation costs, property

damage and economic loss. Such proceedings have been initiated in several jurisdictions, including France, Belgium, Italy, Austria and Germany, with some disputes involving substantial financial exposure.

Alongside these compensation claims, a second trend is emerging: strategic litigation aimed at testing the adequacy of public authorities' responses to PFAS-related risks. Rather than focusing on compensation, these cases invite courts to assess whether existing regulatory measures provide an adequate level of environmental and public health protection. This raises broader questions regarding the extent to which courts should review governmental choices in an area characterized by evolving scientific knowledge and a rapidly developing regulatory framework.

- **Claims Against Industrial Operators**

Sweden also illustrates the growing diversity of PFAS-related litigation in Europe. Historical PFAS contamination, largely linked to the long-term use of PFAS-containing firefighting foams at military sites, has affected groundwater and drinking water supplies in several areas, including Ronneby and Uppsala, giving rise to different types of civil proceedings. Residents of Ronneby have brought compensation claims against the municipal water company for alleged harm resulting from long-term exposure to PFAS-contaminated drinking water.

Beyond the specific facts of these cases, the Swedish proceedings highlight a number of broader legal issues that are likely to arise elsewhere in Europe, including the allocation of liability between multiple actors, the establishment of causation, the recoverability of remediation costs and personal injury claims, and the application of limitation periods to historical environmental contamination.

- **Claims Against the State**

The diversification of PFAS litigation is not limited to claims against industrial operators.

In the Netherlands, environmental organizations brought collective proceedings against the Dutch State, arguing that it had failed to adopt sufficiently stringent measures to prevent and reduce PFAS contamination.

In a judgment delivered in February 2026, the District Court of The Hague dismissed the claim, holding that, in light of the current state of scientific knowledge, the State's existing strategy satisfied its duty of care. The court further emphasized that it was not for the judiciary to prescribe the content of environmental policy or require the legislature to adopt specific regulatory measures, recognizing that the State enjoys a broad margin of discretion in this area.

While the claim was unsuccessful, it illustrates the emergence of strategic litigation seeking to challenge public authorities for alleged regulatory inaction. It

will be interesting to see whether courts in other European jurisdictions adopt a similar approach or prove more willing to scrutinize the adequacy of governmental responses to PFAS-related risks.

For now, it appears that there is an asymmetry in the current PFAS landscape: States retain a wide margin of discretion in setting the pace of PFAS regulation and are rarely held to account for the adequacy, or lack thereof, of their own regulatory response, whereas industrial operators face a rapidly expanding wave of litigation for conduct that complied with the law as it stood at the time.

Challenges associated with this type of Litigation: establishing a causal link in the absence of established reference value

One of the key legal challenges in PFAS litigation is establishing causation. This is made particularly difficult by the absence of established reference values against which analytical results can be assessed. As a result, test results may vary significantly and be open to different interpretations. Uncertainty also remains as to how courts will approach issues such as the detection of PFAS degradation products (precursors) or situations where contaminated water has been treated before samples are collected.

At the same time, the legal framework is gradually evolving to reflect advances in scientific knowledge. In this respect, a French circular dated 27 April 2026 concerning the monitoring of PFAS in sewage sludge intended for agricultural use

and the management of PFAS-contaminated sludge was issued in France. Its purpose is to organize a nationwide monitoring campaign targeting sludge intended for land application from the largest municipal and industrial wastewater treatment plants, as well as all treatment plants receiving effluents from industrial facilities in the textile and paper sectors. Depending on the analytical results, risk management measures, including restrictions or prohibitions on land application, may be implemented.

At this stage, the available analyses do not establish that the contamination originated from the land application of industrial sludge. This assessment is particularly complex because PFAS may originate from multiple sources, migrate through different environmental pathways, including wastewater, sewage sludge and groundwater.

Much like asbestos litigation in its early stages, PFAS litigation concerns contamination that was not subject to a comprehensive regulatory framework when the relevant activities took place. As a result, courts are required to address significant legal and evidentiary uncertainties in an area of law that is still taking shape.

These proceedings illustrate not only the emergence of a new wave of PFAS litigation, but also the difficulties faced by a legal framework that, despite ongoing reforms, continues to struggle to keep pace with scientific developments. The latest analytical methods are capable of detecting PFAS

concentrations that would not have been identified using traditional testing techniques, raising important questions regarding the adequacy of existing regulatory thresholds and the need for further adaptation of the legal framework.

Despite the uncertainties surrounding the applicable legal framework, the potential consequences of PFAS-related litigation can be substantial. Environmental criminal law plays an increasingly important role in this area, and the sanctions available may be severe. Industrial operators are therefore expected to anticipate legal risks and make compliance decisions in the absence of a fully developed regulatory framework, while potentially being held liable for conduct that predated both current scientific knowledge and today's regulatory standards.

A first step towards implementing the "polluter pays" principle in France

According to the European Commission, the societal and economic costs associated with PFAS contamination are considerable.

- If the current levels of pollution continue until 2050, the cost to society will reach €440 billion over that period.
- Treating contaminated water alone would cost more than €1 trillion.
- However, tackling PFAS releases at the source could save €110 billion.

If the "polluter pays" principle is intended to underpin both French and European

environmental policy on PFAS, its practical implementation remains particularly challenging.

Before remediation costs or compensation can be allocated, it is necessary to identify the source of the contamination, establish the existence of recoverable damage and demonstrate a sufficient causal link between the alleged pollution and the party held responsible.

Its application is even more complex where the contamination occurred over an extended period at a time when no specific regulatory framework was in place. As explained above, unlike other historical environmental contamination, such as asbestos or pesticides, PFAS often originate from multiple sources, remain in the environment for decades and, in some sectors, currently have few viable substitutes. As a result, determining who should ultimately bear the costs of remediation and compensation remains one of the central legal questions surrounding PFAS litigation.

Against this background, several mechanisms have been discussed in France to facilitate the financing of remediation and compensation:

- the introduction of an environmental tax on PFAS-containing products, with the proceeds allocated to a dedicated remediation fund;
- the establishment of a compensation fund,

supplemented by reimbursement mechanisms;

- the creation of an extended producer responsibility (EPR) scheme together with a dedicated PFAS collection and treatment sector;
- integration into existing taxes;
- the introduction of an environmental charge.

A first step towards implementing the "polluter pays" principle was taken with the publication, on 25 June 2026, of a decree and implementing order establishing a water pollution charge applicable to PFAS discharges. Under this new regime, the charge is calculated based on the quantity of PFAS discharged into water over the course of a year, with defined thresholds and monitoring obligations intended to support its implementation.

Industrial water pollution charges already apply in France to other pollutants, such as phosphorus, nitrites, and nitrates. The revenues generated by these charges contribute to the funding of the French Water Agencies (*Agences de l'eau*), which, among other functions, provide financial support to local authorities for water pollution prevention and remediation measures. Questions remain as to whether the newly established thresholds adequately reflect current scientific understanding.

Recent regulatory developments in Europe¹

The European Union continues to strengthen its regulatory framework governing PFAS, reflecting increasing concerns regarding their persistence in the environment and their potential risks to human health.

• Proposed EU-wide PFAS Restrictions

ECHA's two scientific committees support EU-wide action with appropriate derogations and controls to address the growing and long-lasting risks PFAS pose to people and the environment.

In March 2023, national authorities submitted a request to ECHA, the European Chemicals Agency, for restricting all PFAS. This would mean a broad restriction instead of the substance-by-substance approach used in previous restrictions. Based on ECHA's opinion, the Commission will propose a restriction.

The proposal would regulate PFAS as a single chemical class and could ultimately result in a ban on most uses, while allowing limited derogations where the continued use of PFAS is considered essential and the associated risks can be adequately controlled.

The European Chemicals Agency (ECHA) has confirmed that the scientific assessment

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https://environment.ec.europa.eu/topics/chemicals/pfas-pollution_en

remains ongoing, with the final opinions of its Committee for Socio-Economic Analysis (SEAC) expected by the end of 2026.

This adoption will conclude ECHA's Committees' scientific evaluation of the proposed restriction, and the opinions will be formally submitted to the European Commission. Based on the two final opinions, the Commission will propose a restriction for discussion and vote in the REACH Committee, composed of EU Member States.

- **Drinking Water**

The EU has adopted limits for PFAS in drinking water. Since January 2026, Member States must monitor PFAS levels in all drinking water and ensure they are within limits.

- **Groundwater and Surface Water**

In April 2026, in the framework of the European Green Deal, the EU adopted a proposed update to the lists of water pollutants, to ensure they will always be aligned with the latest scientific advice, and that new substances will be monitored and more strictly controlled.

- **EU Soil Strategy for 2030**

Under the Soil Monitoring Law, the EU establishes a list of soil contaminants, including PFAS. Member States will need to measure PFAS in relevant soil samples, allowing contamination hotspots to be identified.

- **Toy safety regulation**

The new Toy Safety Regulation extends the list of hazardous substances prohibited in toys to include PFAS, with a transitional implementation period of four and a half years.

- **Packaging**

From August 2026, the Packaging and Packaging Waste Regulation bans food contact packaging that contains PFAS concentrations above certain limits.

Conclusion

The regulatory and litigation landscape surrounding PFAS is evolving rapidly. While France and the European Union have taken significant steps to strengthen the regulation of these substances, many legal and practical questions remain unresolved. These include, in particular, the establishment of causation, the development of reliable scientific reference values, or the determination of the parties responsible for remediation.

Looking ahead, another fundamental question concerns the future role of PFAS. The current regulatory trajectory could, in theory, lead to increasingly broad restrictions or even a near-complete phase-out of PFAS. In practice, however, such an outcome is far from straightforward. For a number of applications, technically and economically viable alternatives remain limited or, in some cases, unavailable.

Experience in other regulatory fields suggests that a more nuanced approach may ultimately be required. In the area of pesticides, for example, the absence of suitable alternatives has, in certain circumstances, justified transitional measures or derogations from otherwise restrictive rules. Whether a comparable approach will emerge for PFAS remains to be seen.

The challenge for legislators and courts will be to strike an appropriate balance between environmental and public health objectives, technological feasibility and legal certainty. Ultimately, the regulatory framework remains a work in progress and will continue to evolve.

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