To: Mr. Giuseppe Casella

Head of Unit B2, DG GROW

European Commission

Avenue d'Auderghem 45

1049 Brussels, Belgium

Brussels, 16 March 2021

**Reference: French notifications 2020/0832/F - Decree on the provision of information to identify endocrine disruptors in a product; and 2020/0833/F - Decree on the identification of dangerous substances in waste-generating products**

Dear Mr. Casella

The Plastics industry is fully committed to sustainable solutions needed for the manufacturing and trading of safe products. Our industry supports the objectives of the [Chemicals Strategy for Sustainability](https://ec.europa.eu/environment/pdf/chemicals/2020/10/Strategy.pdf). Thus, we will continue innovating and enabling products that guarantee the highest level of safety and protection of human health and the environment.

In such a context, we would like to bring to your attention some critical points concerning the draft Decrees notified by France with the reference number **TRIS 2020/833/F and TRIS 2020/832/F**. These Decrees would set out provisions on the identification of substances of concern and endocrine disruptors which go beyond the rules set out by the relevant EU regulations. This would create obstacles to the completion of a single market and hindrances to the necessary market dimension of a well-functioning circular economy.

**Background information**

Law No 2020-105 of 10 February 2020 (hereafter: the Law) against waste and for a circular economy contains provisions on the possibility of strengthening the information requirements regarding the presence of hazardous substances in products as established at EU level by Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ([the REACH Regulation](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02006R1907-20140410)).

Article 13 of the Law provides for the adoption of implementing decrees which would enable the identification of hazardous substances, including endocrine disruptors in products placed on the French market.

Article 13-I of the Law regards consumer information on the environmental characteristics of waste-generating products. It states that an implementing decree would determine "*the definition of environmental qualities and characteristics, the procedures for identifying them, the categories of products concerned and the procedures for informing consumers*".

According to the same article, another implementing decree would have to identify and set the list of hazardous substances. This would be done following an opinion of the French Agency for Food, Environmental and Occupational Health and Safety (ANSES).

In such a context, an ANSES [opinion](https://www.anses.fr/fr/content/note-ast-relative-%C3%A0-la-mise-en-%C5%93uvre-des-dispositions-relatives-%C3%A0-linformation-des) published on 2 November 2020 states that the list of Substances of Very High Concern (SVHC) established under the REACH Regulation must form the basis to form the list contemplated by the Law. Additional opinions will be needed to specify what other substances should be included in the national list of hazardous substances. The adoption of these additional opinions are still pending.

Article 13-II of the Law sets out rules on the obligation to inform the public on the presence of endocrine disruptors in products. Article 13-II requires an implementing decree by the Council of State to set out the necessary applicability criteria.

Article 13 of the Law will enter into force on 1 January 2022.

**The implementing draft Decrees**

On 21 December 2020, the draft implementing Decrees to be adopted under article 13.I and 13.II of the Law which would lay down the conditions governing the application of the legislative provisions related to the list of hazardous substances and the obligation to provide information on the identification of endocrine disruptors in products have been notified by France under notification number **TRIS 2020/833/F and TRIS 2020/832/F**.

**Comments and Recommendations**

These draft Decrees raise a number of concerns. In particular, these regard the timeline for their implementation (e.g. the would predate the planned REACH review to be initiated by the EU Commission; and the actions to be undertaken under the Chemicals Strategy for Sustainability and coming Sustainable Product Initiative). Also, these would trigger an increased level of complexity regarding the information obligations to be met by the value chain operators placing products on the French market. Lastly, they would trigger labelling requirements that would not be in line with EU obligations and therefore affect the free movement of goods within the EU.

European plastics producers are of the opinion that the French draft Decrees should be aligned with the decisions that will be adopted in the upcoming period at EU level, in the context of the Green Deal and specifically under the planned REACH review, the Sustainable Products Initiative and Chemicals Strategy for Sustainability.

National provisions diverging from the EU rules are likely to create considerable burden for the industry and could fragment the EU internal market to the detriment of the Circular Economy, in addition to causing confusion among both consumers and users of chemicals. Furthermore, the publication of national list of substances (Hazardous substances and EDs) would be in contradiction with the “One substance one assessment” principle foreseen by the Chemicals Strategy for Sustainability

**Specific Comments and Recommendations on the Draft Decree on Identification of Hazardous Substances in Waste-Generating Products - French notifications 2020/0833/F**

Regarding the requirements on hazardous substances, the provisions concerning consumers’ information go beyond those set out under the REACH Regulation on the following points:

1. The Law foresees an obligation to inform consumers on the presence of SVHC in products, whereas article 33.2 REACH states that information to consumers should be provided only upon specific requests.
2. The draft provisions would extend the requirement to also inform consumers of the presence of substances having equivalent levels of concern to SVHCs, but not included in the “European Candidate List” (which is the EU list of SVHC as set out under the REACH Regulation). Notably, the identification of these additional substances would be carried out by the national authorities without any obligation to make reference to the harmonized SVHC identification criteria listed in Article 57 of REACH. This would jeopardize the harmonised European SVHC identification procedure as well as the risk management procedures associated to it (e.g. value chain communication requirements) and fragmenting the risk management requirements applicable to the EU market.
3. Lastly, this draft decree does not mention any threshold level that would trigger the application of the information requirements. We call for the harmonisation of the draft France requirements with the European regulations (set out under Art. 33.2 of the REACH Regulation). The reference to a concentration threshold is essential for regulatory compliance and legal certainty, for both manufacturers and enforcing agency.

**Specific Comments and Recommendations on the Draft Decree on the Provision of Information Identifying Endocrine Disruptors in Products - French notifications 2020/0832/F**

Regarding the issue of making available to the public data on the presence of endocrine disruptors in products, which includes the creation of a data base on endocrine disruptors, we call for:

1. An assessment of the criteria used by ANSES for the future identification of endocrine disruptors and their classification in the three categories identified by the Law (i.e. known, presumed and suspected endocrine disruptors – Article 13.II). We believe that the identification of endocrine disrupting substances must be aligned with the criteria defined at EU level;
2. A clear definition of the methodology and criteria as well as the full transparency of the processes that will be adopted for the listing of these substances;
3. The identification, by the implementing Decrees of the threshold(s) triggering the information requirements. The obligations applicable in France must align with those established under the European Regulations. The reference to a concentration threshold is essential for regulatory compliance and legal security of the system, for both manufacturers as well as enforcing agencies;
4. Clear legal provisions to be included in the draft Decree to clarify its scope. Art. 1 of the draft Decree would only exempt medicines and foodstuffs as defined by Article 2 of Regulation (EC) No 178/2002. There seems to be a discrepancy with the scope requirements of the REACH Regulations, therefore, it should be made clear which products are exempted.

PlasticsEurope welcomes the opportunity to provide inputs to the European Commission. We believe that the issues raised above warrant the adoption by the Commission of a detailed opinion concluding that the draft law as notified by France creates clear barriers to the free movement of goods that have not been justified, and require amendment before the law can enter into force. We remain at your disposal for any further information or clarifications related to the issues raised in this submission.

Yours sincerely,



David Carroll

External Affairs Director

PlasticsEurope