21-04-2023

Cosmetics Europe comments on the draft order on the identification of hazardous substances in waste-generating products, submitted by France to the European Commission (TRIS 2023/26/F)

Cosmetics Europe, the European trade association representing the cosmetics and personal care industry, recognizes the strength of the EU regulations (in particular REACH Regulation No 1907/2006 and CLP Regulation No 1272/2008) as effective tools to protect consumers and the environment from the potential risk of certain chemical substances.

We therefore would like to raise our concerns regarding the French draft order on the identification of hazardous substances in waste-generating products (the "Draft Order"). The Draft Order establishes, in parallel to the EU candidate list of substances of very high concerns ("SVHC") under the EU REACH Regulation, a French list of additional dangerous substances subject to information requirements for products placed on the French market, as per the French Decree No 2022-748 of 29 April 2022 *relatif à l'information du consommateur sur les qualités et charactéristiques des produits générateurs de déchets* (the "Decree No 2022-748").

National requirements beyond EU harmonized legislation

Identification of SVHC and communication on these substances are regulated at the EU level, in particular, by the REACH Regulation No 1907/2006 and the CLP Regulation No 1272/2008.

The French Draft Order, together with the Decree No 2022-748, go beyond EU harmonized legislation, by creating an additional French list of additional dangerous substances which triggers communication requirements in products placed on the French market, while these substances are not currently on the EU SVHC list. Furthermore, those requirements apply to articles and mixtures, while article 33 of the REACH Regulation only applies to articles.

Breach of EU market rules

The French additional requirements for products placed on the French market will lead to the fragmentation of the internal market, in contradiction with the aim and scope of the REACH Regulation, which is defined in its article 1 as the free circulation of substances, behind a high level of protection of human health and environment guaranteed by conformity with REACH. The national provisions are in addition not in line with article 128.1 of REACH which provides that, "*Member States shall not prohibit, restrict or impede the manufacturing, import, placing on the market or use of a substance, on its own, in a mixture or in an article, falling within the scope of this Regulation, which complies with this Regulation and, where appropriate, with Community acts adopted in implementation of this Regulation*". As stated in the second recital of REACH, "*the efficient functioning of the internal market for substances can be achieved only if requirements for substances do not differ significantly from Member State to Member State*".

These restrictions to the internal market are not justified, as these are not suitable to achieve the objective pursued by the Draft Order which is stated in section 9 of the TRIS notification 2023/26/F, as being the information improvement on the presence of chemicals that could have an impact on health and environment in waste-generated products with the view to enabling the citizens to make informed consumption choice. To the contrary, the additional French requirements could rather be confusing for consumers, as the substances referred to in the Draft Order are not on the EU SVHC list as per the REACH Regulation.

It has also to be reminded that the mere purpose of REACH “is to ensure a high level of protection of human health and the environment […], as well as the free circulation of substances on the internal market […]” and that it is for manufacturers, importers and downstream users to comply with the provisions laid down in REACH and to ensure that they manufacture, place on the market or use substances that do not adversely affect human health or the environment (article 1 REACH).

Request to the European Commission

The adoption of additional requirements by a Member State independently from the EU regulatory framework (REACH, CLP), not only would defeat the purpose of harmonized legislation in the EU internal market, especially at the present moment when these legislations are under revision, but would also create confusion for consumers and stakeholders.

Cosmetic Europe therefore requests the European Commission to examine the Draft Order towards the EU internal market rule, the compatibility with the existing legislations on REACH and CLP, as well as, in light of the upcoming revisions of related legislation and to extend the standstill period as necessary.