



To the attention of the European Commission  
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Unit B2 “Regulatory barriers”  
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### **Contribution from Union Fleurs on the draft French Order relating to prior information to be issued to purchasers of plants likely to affect human health (Notification 2019/638/F)**

On 13 December 2019, the French authorities notified a draft Order relating to prior information to be issued to purchasers of plants likely to affect human health<sup>1</sup>, to the services of the European Commission within the framework of Directive (EU) 2015/1535<sup>2</sup>.

Union Fleurs is the international umbrella organisation for national associations and companies active in the floricultural trade (cut flowers and potted plants) and represents the interests of operators involved in the trade of these products (importers, exporters, wholesalers and distributors) in the EU and in 20 countries worldwide. Union Fleurs fully supports the objective to reduce any potential risks linked to plant species likely to harm human health. However, as it stands, we consider that this draft French Order would have potential impact on the free movement of plants in the internal market (I) whilst not achieving its main purpose of protecting the human health (II).

#### **1. ANTICIPATED IMPACT ON THE FREE MOVEMENT OF PLANTS ON THE EU INTERNAL MARKET:**

The draft Order imposes distributors and sellers to make available to buyers, prior to the conclusion of a contract of sale, certain information on health risks linked to certain plant species, as listed in its Annex. Any plant purchaser, being a natural or legal person, acquiring a listed plant from a seller or distributor, even within the context of contracts of supply of services, shall be informed about the risks through an “accompanying document” easily accessible before the sale.

**Being imposed to French but also to European distributors and sellers, this obligation is very likely to have an impact on the smooth functioning of the EU internal market.** One shall recall that the French market (sales to consumers, to professionals other than those of the agricultural sector as well

<sup>1</sup> Projet d’arrêté relatif à l’information préalable devant être délivrée aux acquéreurs de végétaux susceptibles de porter atteinte à la santé humaine (NOR : AFSP1623107A).

<sup>2</sup> Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

as to French public collectivities) is highly dependent on the importations of plants from other Member States: nowadays, 60% of the plants (any plants, excluding cut flowers) are mainly imported in France from other Member States of the EU<sup>3</sup>.

**In practice:**

- Although the “accompanying document” is broadly defined<sup>4</sup>, such prior information obligation will oblige non-French European distributors and sellers to adapt the labelling, general presentation of their products or their general conditions of sale for the marketing of their products – which are legally commercialized in their own country – for the sole French market.
- In addition, if the aim is to efficiently inform purchasers on potential risks of a specific plant, European distributors and sellers will face concrete difficulties in implementing the requirements of Article 2 (II) of the draft Order:

Under this provision, for retail sales, *“the accompanying document shall be placed in the immediate vicinity of the plants concerned”*. For distance contracts of sale, *“the information listed in the annex shall appear on the same information medium as that presenting the plant offered for sale, close to the information presenting this plant”*.

These provisions, which are unclear, are likely to cause implementation difficulties, especially for European plant exporters to France:

- It is not clear whether the seller and distributors shall make available the whole “information” of the Annex (all the lists), irrespective of the plant sold. If so, the objective to inform buyers will not be achieved as the information would be too confusing and not specific.
- European distributors and sellers may therefore have to select the specific information to be provided to the purchaser, for the specific plant sold, and adapt the presentation and labelling of the said plant for the French market only. To that aim, they will have to get acquainted to the information and lists of the draft Order, which are existing only in French language: this will undoubtedly lead to additional concrete difficulties to understand the relevant information to be provided to purchasers, depending on the plant species sold, being within the context of on-line and off-line contracts.

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<sup>3</sup> Estimation made based on customs and sector’s data.

<sup>4</sup> Article 1, paragraph 4: “accompanying document: a label, a sign, a brochure, a display, a descriptive medium for the product, a quote, general conditions of sale or any other medium of information bearing the information aimed at plant purchasers and provided by the distributor or the seller”.

In such context, the draft Order may be considered as hindering, directly or indirectly, actually or potentially, intra-Community trade and should be considered as a measure having an effect equivalent to quantitative restrictions<sup>5</sup>, which is prohibited under the Treaty of functioning of the European Union<sup>6</sup>. Indeed, according to the European Court of justice:

- The mere fact to be dissuaded to introduce or commercialized some products in another Member State may constitute for the importer an obstacle to the free movement of goods<sup>7</sup>.
- *“In the absence of harmonization of national laws, Article 30 prohibits in particular obstacles to the free movement of goods that are the consequence of applying, to goods coming from other Member States where they are lawfully manufactured and marketed, rules that lay down requirements to be met by such goods, such as those relating, for example, to their presentation, labelling and packaging, even if those rules apply without distinction to national products and to imported products alike”<sup>8</sup>.*

## 2. A MEASURE THAT LACKS PROPORTIONALITY AND CANNOT BE JUSTIFIED BY THE OBJECTIVE OF PROTECTION OF HUMAN HEALTH

According to the French authorities, the draft Order is based on Article L1338-3 of the Public Health Code and therefore aims at protecting the human health.

To be considered as justified by the objective of protection of health and life of humans, the measure shall be necessary, and no more than is necessary, to achieve the desired result (proportionality principle). If a measure is not appropriate (suitability test) to attain the objective or if the same objective can be achieved by less restrictive measures (necessity test), then the restrictive national measure will be found to be disproportionate and therefore unjustified.

**We believe that the obligation of prior information as stated in the draft French Order is both inappropriate to ensure human health as well as disproportionate.**

- First, according to relevant data<sup>9</sup>, **symptomatic accidents linked to plants are very limited**: for instance, in France, only 5% of contacts with poison control centers are linked to plants ( $\pm$  7000 individuals / year), of which 70% are asymptomatic, 30% are symptomatic ( $\pm$  2000 individuals / year; 0.003% of the population) and only 0, 3% being described as serious ( $\pm$  20 individuals / year; 0.00003% of the population). In addition, such serious cases have sometimes voluntary or addictive origins. A significant proportion of contacts is observed with children - more than three-quarters - in a domestic context, explained by the awakening to the world around them. It should be noted, however, that in general, cases involving children often turn out to be mild, more serious cases involving adults. Finally, the situations in which

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<sup>5</sup> Case 8/74.

<sup>6</sup> Article 24 TFEU.

<sup>7</sup> Case C-249/07.

<sup>8</sup> C-3/99.

<sup>9</sup> Rodallec S., 2013. Risque d'intoxication par les plantes et pratique officinale. Thèse, Univ. Nantes.

contacts with plants occur are varied: private spaces (interior and garden), public or natural spaces.

This shall be carefully considered in **assessing the suitability and proportionality** of the proposed measure. Indeed, to succeed on justifying a restrictive measure on the ground of protection of human health, France should first prove the existence of real health risks. However, whilst according to the French authorities the number of reports to poison control centers involving plants have increased since 1999 – which is mainly linked to more efficient reporting methods to these centers – it shall be underlined that the number of serious cases remains quite stable and low even according to their figures.

- Then, **most of the plants listed in the draft Order Annex can be found in the natural environment where most of the harmful contacts occur** : therefore, a prior obligation of information as the one proposed by the draft Order will **not be appropriate** to reduce potential risks to human health caused by these specific plant species.
- In addition, as regard the prior information **within the context of public procurement contracts**, such measure appears to be **unsuitable** to achieve the objective of protection human health:

Informing public authorities at the stage of the submission of the tender by the bidder is already too late. Public authorities shall be made aware of potential risks of certain plants through adequate communications means (ex. Guides of good practices, exchanges and knowledge improvements initiative involving the professionals of the sector), to be provided beforehand and at the latest at the time of drafting of the specifications of the call for tenders<sup>10</sup>.

- Such a prior information obligation is also **disproportionate as the human health could be insured by less restrictive and more efficient measures**: for instance, a close cooperation between professionals and public authorities could improve the awareness of such authorities as regard allergens plants used in cities and collective environment so as to reduce potential allergy risks. Also, targeted information campaigns towards purchasers, by public authorities and/or the sector representatives, at national but also European level, would be much more efficient to reduce potential human health risks.

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<sup>10</sup> Such measures were recommended by the French National Agency for Food Environmental and Occupational Health and Safety (ANSES) a long time ago « *Dans cet objectif, les collectivités territoriales doivent être informées des risques liés aux pollens allergisants et les professionnels de l'aménagement des espaces verts doivent être sensibilisés à cette problématique, par exemple, par la diffusion de guides, tels que « Végétation en ville », édité par le RNSA* ». Avis of the ANSES (2011-SA-0151).

### 3. AN ANNEX WITH NO TRANSPARENT METHODOLOGICAL BASIS

The criteria leading to the drafting of the Annex listing plants likely to affect human health are not known and have not been communicated by the services of the French administration. Therefore, the motivations that led to the list of plants stated in the Annex are not clearly established and the lack of a factual and transparent risk analysis for each listed plant severely undermines the seriousness of the approach. By way of comparison, the registration of a species under the European Regulation 1143/2014 on invasive alien species is based on a set of precise, transparent and accessible criteria. This is not the case in this initiative.

**Considering all the above-mentioned elements, we sincerely hope, on behalf of our membership, that the present position will be dully taken into account by the European Commission in assessing the compatibility of the draft French Order with the European legislation on the free movement of goods.**

Thanks in advance for taking our comments into due consideration.  
Union Fleurs remains available for any further inputs and details as needed.

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**Union Fleurs – International Flower Trade Association** is the international umbrella organisation for national associations and companies active in the floricultural trade. The general mission of Union Fleurs is to represent, promote and defend the worldwide interests of the traders and wholesalers in cut flowers, cut foliage and potted plants.

Union Fleurs was founded in 1959 in Brussels and has nowadays members in 20 countries worldwide (in Europe, Africa, Middle-East, South and North America, and Asia). Within its membership, Union Fleurs gathers over 3.000 companies worldwide, of which more than 1,500 floricultural traders and wholesalers in the EU. Members account for more than 80% of the total value of the worldwide trade of cut flowers and pot plants.

More information on Union Fleurs is available at: [www.unionfleurs.org](http://www.unionfleurs.org)

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