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Apparel & Footwear International RSL Management Group
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AFIRM Group Response to TRIS Notification 2025/0431/FR (France) – Draft implementing decree for Article 1 of Law No. 2025-188 (Protection the population from the risks associated with PFAS)

1. Introduction

The AFIRM Group, a global association of the world's leading apparel and footwear companies with a mission to reduce the use and impact of harmful substances in the apparel and footwear supply chain, supports the timely and effective phase out of **per- and polyfluoroalkyl substances (PFAS)** from products. AFIRM published comprehensive PFAS Phaseout Guidance to assist the industry in this endeavor back in May 2023 with an updated version set for release in November 2025.

However, we are concerned that the proposed French Decree implementing Law No. 2025-188 **diverges significantly** from existing EU REACH and POPs restriction of PFAS and pre-empts the ongoing EU REACH universal restriction of PFAS ('UPFAS restriction') currently under assessment by the European Chemicals Agency (ECHA). This divergence would lead to substantial technical complexity and legal uncertainty making it impossible for industry operators to consistently comply – let alone validate compliance – with the proposed limits in the short timeframe before the Decree's proposed 1 January 2026 effective date.

2. Key Concerns

Risk to the EU Single Market: This unilateral action made by a Member State ahead of the UPFAS restriction would create barriers to trade and negatively distort the single market by creating fragmented rules, hindering the free movement of goods between Member States (Article 34 TFEU). See 'Annex A' for a detailed breakdown of technical differences between existing EU PFAS restrictions and the Decree's proposed restriction of PFAS.

Legality Under EU Law: The draft decree appears to violate the following established EU legal principles –

- Articles 26, 28–30 and 114 of the Treaty on the Functioning of the European Union (TFEU) establish that products lawfully manufactured and marketed in one Member State must be able to circulate freely throughout the Union without additional technical or regulatory barriers. The Court of Justice of the European Union (CJEU) has consistently reinforced this principle, notably through the *Dassonville, Cassis de Dijon* and *Keck* judgments, which clarified that national measures capable of hindering intra-EU trade are contrary to Article 34 TFEU unless duly justified, necessary and proportionate.

- In the context of chemicals regulation, this principle operates alongside the REACH and POPs Regulations. In particular, Article 67(3) of REACH allows **stricter national measures only if they were already in force before the relevant EU restriction entered into force**. The French decree would be adopted after the POPs restrictions on PFOS, PFOA, PFHxS, and C9–C14 PFCAs, as well as after adoption of the REACH restriction on PFHxA (entry into force 10 October 2026) and, therefore, cannot rely on this safeguard clause.

- Article 128.1 REACH provides that Member States shall not prohibit, restrict, or prevent the manufacture, import, placing on the market, or use of a substance, on its own, in a mixture or in an article, that falls within the scope of REACH and complies with its requirements. While Member States can still maintain or establish national rules aimed at protecting workers, human health and the environment, under article 128.2 REACH, this must be **limited to cases where REACH does not harmonize requirements on manufacture, marketing, or use**.

- Article 129 of REACH permits national provisional measures only in emergency situations where risks are not adequately controlled at Union level and **requires notification and review, which have not happened in this case**.[1]

- The POPs Regulation already establishes binding concentration limits for PFOS, PFOA, PFHxS, and C9–C14 PFCAs that must be applied uniformly in all Member States. The French draft decree **conflicts directly with binding POPs thresholds** and creates legal uncertainty for manufacturers and importers.

- In a comparable context, regarding the French order establishing a list of substances with endocrine-disrupting properties, the European Commission expressed concerns about overlaps and stricter requirements vis-à-vis the REACH, Medical Devices and Biocidal Products Regulations, among others. The Commission invited France to reconsider or clarify the notified draft to avoid inconsistency with EU law, reminded it to notify the final text once adopted, and reiterated that **national measures must not contradict harmonized EU rules or restrict the free circulation of goods**.[2]

Therefore, the proposed French PFAS decree–introducing product-specific limits and restrictions already covered by EU law – appears incompatible with the harmonized REACH and POPs framework and risks breaching Articles 34 of TFEU and 128 of REACH, as well as the fundamental objective of the Single Market.

Technical Feasibility: The global commercial laboratory testing networks are currently unable to reliably test the newly proposed limits for several key PFAS, including PFAS-related substances fluorotelomer alcohols (FTOHs), which are one of the main species of PFAS precursors typically found with recently published test method EN 17681-1:2025. As such, testing and compliance with the newly proposed limits will be extremely complicated and not fully possible until the commercial testing labs are able to reliably measure these low limits.

Existing Stock and Circular Economy Considerations: Neither Law No. 2025-2188 nor the draft implementing decree includes provisions addressing existing stocks and circular textiles (i.e., sell through of existing stocks or derogations for secondhand articles and repaired/refurbished/recycled

[1] https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1907
[2] https://technical-regulation-information-system.ec.europa.eu/es/notification/23627/message/18489/EN

products). Global product chemical regulatory policy, including existing EU PFAS restrictions under REACH and POPs, exempts clothing, footwear, and related accessories offered on the secondhand market that were in end-use prior to the effective date of new chemical restrictions as a matter of practicality and to extend the useful life of existing products. Additionally, the EU's pending UPFAS restriction now includes a 13.5-year derogation for textile articles containing recovered materials. This is to ensure the continued viability of the European textile recycling industry and to allow European and French textile extended producer responsibility (EPR) and circular economy goals to be met. As drafted, the decree would mean a de facto ban on any circular product or material that does not already conform to the new restriction limits.

Intentional Use vs. Background or Cross-Contamination: Finally, the complicated aspect of cross-contamination remains a concern. The high persistence and historic wide use of PFAS means they are often present in trace background levels and susceptible to cross-contamination during product manufacturing, transportation, and testing as well as from environmental media. Individual PFAS analytes may therefore be found in trace amounts potentially exceeding the newly proposed French decree limits in products when no PFAS were used. The current limitations of testing technology make it impossible to reliably distinguish between intentional use and unavoidable background traces, creating a risk that both regulators and industry will be acting on flawed data. Requiring these new limits in less than three months' time would effectively ban many products made without any intentionally added PFAS, since industry is not provided enough time to address background contamination or even the ability to properly measure potential cross contamination.

3. AFIRM Group Recommendations

AFIRM has shared recommendations directly with the relevant French Ministries responsible for drafting the decree, which include:

- The decree should clarify that national provisions will not apply where harmonized EU measures already exist, thus respecting the primacy of EU law and preventing fragmentation of the Single Market.
- Deferring and aligning implementation of new part per billion (ppb) limits with the EU's UPFAS restriction under REACH, ensuring harmonized rules across all Member States.
- In the interim, implementing limits that will ensure no intentional use of PFAS in products in alignment with other jurisdictions such as Denmark and California, e.g., a 50 ppm limit on total fluorine or total organic fluorine beginning in July 2026 or January 2027 (the latter providing a reasonable one year transition period from the Decree's proposed entry into force).
- In addition, the wording from the UPFAS restriction should be included in the French decree, specifically: "*If total fluorine exceeds 50 mg F/kg, the manufacturer, importer, or downstream user shall, upon request, provide to the enforcement authorities proof of whether the measured fluorine content originates from PFASs or non-PFASs.*"
- Derogations for products already produced and placed on the market for the first time prior to entry into force of the restriction.
- Derogations for circular products and materials consistent with existing EU restriction of PFAS (secondhand garments) and proposed under the UPFAS restriction (products made with recovered textiles).

4. Conclusion

AFIRM is committed to **phasing out PFAS** in a safe, effective, and harmonized manner with most of our member companies having already completed a phaseout of intentional PFAS use. We strongly support the **EU REACH restriction** as the appropriate legislative instrument to achieve this goal for the broader industry while safeguarding the **integrity of the EU internal market**.

We therefore respectfully request that the European Commission and French authorities take these concerns into account and ensure that any national measures are fully aligned with EU law, proportionate, and provide sufficient lead time for compliance.

Sincerely,

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ANNEX A

Substance group	Existing POPs/REACH thresholds	French draft decree's (cumulative) thresholds	Divergence / Market barrier
PFOS	≤ 25 ppb sum total for PFOS and its salts; ≤ 1000 ppb sum total for PFOS-related substances	25 ppb per individual PFAS measured by targeted analysis excluding polymers; 250 ppb total sum PFAS measured by targeted analysis excluding polymers; 50 ppm total fluorine for PFAS including polymers.	France introduces a different threshold of 25 ppb for PFOS, any of its salts, and for individual related substances. This includes an additional stricter sum limit for all individual PFAS analytes of 250 ppb and a new 50 ppm total fluorine limit.
PFOA	≤ 25 ppb sum total for PFOA and its salts; ≤ 1000 ppb sum total for PFOA-related substances		France introduces a different threshold of 25 ppb for PFOA, any of its salts, and for individual related substances. This includes an additional stricter sum limit for all individual PFAS analytes of 250 ppb and a new 50 ppm total fluorine limit.
C9–C14 PFCAs	≤ 25 ppb sum total for C9-C14 acids and their salts; ≤ 260 ppb for the sum total of related substances		France introduces a different threshold of 25 ppb for individual C9-C14 PFCAs, any of their salts, and individual related substances. This includes an additional stricter sum limit for all individual PFAS analytes of 250 ppb and a new 50 ppm total fluorine limit.
PFHxS	≤ 25 ppb sum total for PFHxS and its salts; ≤ 1000 ppb sum total for PFHxS-related substances		France introduces a different threshold of 25 ppb for individual PFHxS, any of its salts, and individual related substances. This includes an additional stricter sum limit for all individual PFAS analytes of 250 ppb and a new 50 ppm total fluorine limit.
PFHxA (from 10 Oct 2026)	≤ 25 ppb sum total for PFHxA and its salts; ≤ 1000 ppb sum total for PFHxA-related substances		The restriction on PFHxA has been enacted but will enter into effect at EU level on 10 October 2026. This means that France brings forward the date of application of the restriction by over 10 months In addition, France introduces a different threshold of 25 ppb for individual PFHxA, any of its salts, and individual related substances. This includes an additional stricter sum limit for all individual PFAS analytes of 250 ppb and a new 50 ppm total fluorine limit.