

[REDACTED] /003/19

Mr Vytenis ANDRIUKAITIS
Commissioner
Health & Food Safety
EUROPEAN COMMISSION
Rue de la Loi 200
1049 BRUXELLES

Brussels, 1st February 2019

Potential ban of the food additive titanium dioxide (TiO₂, E 171) in France

Dear Commissioner Andriukaitis,

Following our letter of 26 October 2018 to [REDACTED], we write to you to update you on the recent developments relating to a potential ban in France of the use of the authorised food additive titanium dioxide (TiO₂, E 171). The use of TiO₂ is permitted in a number of food categories, by Regulation (EC) No 1333/2008. Many food and drink producers and food supplements producers use this additive in the permitted food categories and it is technically challenging to replace it with a suitable alternative, given its particular technical functionalities in many applications (especially its opacity, protecting the content of certain products against the damaging influence of light).

As we informed you, the intention to ban the use of this food additive is part of the so-called EGALIM¹ law that was signed on 30 October last year. This ban requires a ministerial implementing Order before it can be applied. On 11 January, the Minister of Economic Affairs, Bruno Lemaire, issued a press statement confirming that he will sign this implementing Order making the ban potentially effective by mid-April. He has asked ANSES, the French Agency for Food, Environmental and Occupational Health & Safety, to update its previous assessment on the safety of TiO₂ E 171 by that date. The French authorities will then notify their measure to the European Commission under Article 54 of Regulation 178/2002. The press statement is attached to this letter.

This makes this ban far more concrete, going further in the direction of fragmenting the Single Market. Given the widespread use of TiO₂ E 171 in many food products put on the market in the EU in compliance with EU legislation, this ban will seriously disturb the free movement of goods and have grave economic consequences, estimated in the order of millions of Euro, in terms of efforts required to conduct the long, expensive and complex process of reformulating products solely for the French market. It will particularly hit SMEs that often lack the resources to address this sort of situation and that compose 99% of the EU food and food supplements producers. It is also important to mention that not in all cases do alternatives to reformulate exist.

The legal basis for the ban as included in Article 53 of the EGALIM law is article L521-17 of the French Consumer Law (Code de la Consommation) and Article 54 of the General Food

¹ LOI n° 2018-938 du 30 octobre 2018 pour l'équilibre des relations commerciales dans le secteur agricole et alimentaire et une alimentation saine, durable et accessible à tous (EGALIM)
<https://www.legifrance.gouv.fr/eli/loi/2018/10/30/AGRX1736303L/jo/texte>

Law Regulation. Both require the presence of grave or immediate danger for such a measure to be justified. This is not the case, especially since the safety concerns raised by the French authorities have been considered by the European Commission, and in turn addressed by EFSA in its opinion published on 4 July 2018. EFSA explicitly concluded that "The outcome of the four studies did not merit re-opening the existing opinion of EFSA related to the safety of TiO₂ (E 171) as a food additive". It is our view, therefore, that there is no justification for France to unilaterally suspend the use of this additive, which would set an important precedent undermining the fundamentals of EU harmonized law and the Internal Market.

We therefore ask the Commission to firmly object to this national legislation.

Thanking you in advance for taking these remarks into consideration, we are available for a meeting to discuss these developments in more detail.

Yours sincerely,

On behalf of

Food Supplements Europe
FoodDrinkEurope
EU Specialty Food Ingredients



cc.	Mr Arūnas Vinčiūnas, Mr Tomasz Husak, Mrs Anne Bucher, Mrs Sabine Juelicher, Mr Carlo Pettinelli, [redacted], [redacted]	Head of Cabinet of Cssr Andriukaitis Head of Cabinet of Cssr Bienkowska Director General DG SANTE Director Food and Feed Safety, Innovation at DG SANTE Director Consumer, Environmental and Health Technologies at DG GROW [redacted] Food Processing Technologies and Novel Foods at DG SANTE [redacted] Biotechnology and Food Supply Chain at DG GROW
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MINISTÈRE DE L'ÉCONOMIE
ET DES FINANCES

Paris, le 11 janvier 2019

N°956

COMMUNIQUE DE PRESSE

Bruno Le Maire, ministre de l'Economie et des Finances, a réuni aujourd'hui, en présence de l'Agence nationale de la sécurité sanitaire et de l'environnement (ANSES), les organisations suivantes : UFC-Que Choisir, Foodwatch, Sciences Citoyennes, Générations Futures, Agir pour l'environnement, l'Institut national de la consommation, l'Association nationale de défense des consommateurs et usagers (CLVC), France Nature Environnement, et l'association Léo Lagrange.

Le ministre leur a réaffirmé sa volonté d'interdire l'E171, conformément à la position du Gouvernement et aux dispositions votées par le Parlement dans l'article 53 de la loi EGALIM.

Afin de réunir les conditions juridiques nécessaires à cette interdiction, il demande donc à l'ANSES d'accélérer ses travaux sur les nanoparticules sur le volet TiO2 pour le 15 avril, afin de mettre à jour sa précédente évaluation sur la base des nouvelles études disponibles.

Sur la base de ce rapport de l'ANSES, le Gouvernement saisira la Commission européenne. Le ministre exercera son droit de sauvegarde en prenant une décision unilatérale d'interdiction de l'E171, le cas échéant.

Bruno Le Maire réunira à cet effet dans les prochains jours les industriels concernés afin qu'ils mettent à la disposition de l'ANSES les données utiles à cette nouvelle étude.

Le rapport du Gouvernement au Parlement prévu dans la loi EGALIM sur les nanoparticules sera transmis avant la fin de la semaine prochaine.

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