

The Consumer Voice in Europe

REVISION OF EU RULES ON FOOD CONTACT MATERIALS

BEUC comments to the Open Public Consultation



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Why it matters to consumers

Food contact materials (FCM) are essential to how we store, transport, preserve, and ultimately consume our food. But FCMs can also impact the quality and safety of foodstuff throughout the food chain. Chemicals present in packaging can for example contaminate our food, thereby creating risks for consumer health. Existing EU legislation – meant to safeguard consumers against such risks – provides insufficient protection. An overhaul of EU food packaging laws is therefore urgent.

Introduction

EU food contact material legislation fails to adequately safeguard the health and interests of consumers, as documented e.g. in the Commission REFIT evaluation.¹ Thus, BEUC welcomes the European Commission's intention to revise the EU FCM framework to better protect consumers.

A revised FCM framework must establish comprehensive, harmonised rules for all materials and products in contact with food based on the principles of precaution and 'no data, no market', combined with effective enforcement and improved information to consumers. This will require a fundamental rethink of the regulatory approach to FCMs, in line with Option 2 in the Commission Inception Impact Assessment (IIA).²

As the Open Public Consultation provides limited commenting opportunities, this paper elaborates our response, building on BEUC's detailed recommendations³ and our comments⁴ to the initial Commission proposals outlined in IIA.

Towards safe and sustainable food packaging

EU food and chemicals legislation has been modernised over the past two decades; the FCM framework is in contrast a regulatory relic firmly rooted in the approach first instituted in 1976. Current EU and national rules have proven insufficient to achieve the objective of a high level of human health protection.⁵ BEUC therefore strongly supports the Commission's commitment to revise EU FCM legislation in line with the Chemicals Strategy for Sustainability.

To improve food safety and public health, a revised FCM framework must:

¹ European Commission. [Evaluation of the legislation on food contact materials – Regulation \(EC\) No 1935/2004](#). SWD/2022/0163 final. June 2022.

² European Commission. *Revision of EU rules on food contact materials (FCMs). Inception Impact Assessment*. December 2020.

³ BEUC. [Time is ripe to Repackage Food Safely](#). December 2019.

⁴ BEUC. *Revision of EU rules on food contact materials. Comments to Commission Inception Impact Assessment*. January 2021.

⁵ See e.g. BEUC. [Reform EU food packaging to better protect consumers](#). May 2019.

- **Regulate all FCMs through strict implementing rules**, including for materials not listed in Annex I to the FCM Regulation such as bamboo. Doing so will allow public authorities to assess and ensure compliance with the objective of a high level of human health protection. Existing legal limits for e.g. ceramics or plastic materials further need to be revisited to better protect consumers, while the rules for plastic materials need to be extended to cover all relevant chemicals, such as colourants. New legal provisions to reduce the risks associated with consumers' combined exposure to chemicals from FCMs and other sources are likewise needed. This could be achieved by introducing a specific mixture assessment factor in the FCM Regulation.⁶
- **Reduce food contamination** by regulating all substances migrating from final FCMs. As recommended by EFSA,⁷ focus needs to shift from initial starting substances towards the actual mix of chemicals that migrate from finished materials and products, including non-intentionally added substances. We welcome that the IIA recognizes the need for such a new approach, but regret that the public consultation does not seek feedback on how this could be achieved. New rules to minimise the potential for food contamination are however needed to align FCMs with other sectors, such as the generic threshold for pesticide residues in food. Revising Article 3 in line with the safety standard enshrined in EU product laws and the revised Drinking Water Directive (DWD) is also imperative, while EFSA guidance must be developed without delay.
- **Establish a preventive approach** in line with the Chemicals Strategy. The tiered approach outlined in the IIA is promising, provided each tier is pursued in parallel – our answer to Q4(a) should be read accordingly. We strongly support the introduction of a generic ban on substances with the hazard properties listed in Q3 ('Tier 1'). Potential exemptions for these substances should only be considered if industry can show their presence in FCMs is safe AND their use essential to society, cf. the Chemicals Strategy. Preapproval of starting substances are omitted among the tools listed in Q4(b) but should remain a core risk management tool in future, albeit the process must be streamlined to address the issues identified in the REFIT evaluation. Inspiration could e.g. come from the revised Drinking Water Directive. Grouping approaches and tools to tackle low dose effects are further needed. A one substance, one assessment process should support this objective.
- **Encourage sustainable alternatives**, including use of safe, toxic-free recycled materials. This will require new, stringent controls on recycled and on 'natural' materials to incentivise their use, to protect public health, and to promote consumer trust.⁸ Food packaging plays a crucial role in achieving the UN Sustainable Development Goals, as correctly observed in the Farm to Fork Strategy. Thus, we strongly support introducing legal targets to minimise the environmental impacts of FCMs, to prevent over-packaging and waste, and to increase reuse and recycling. Such targets and related requirements should as a priority be established under horizontal environmental legislation, including the Sustainable Products Initiative. A revised FCM framework should however complement such requirements, e.g. through new rules to support use of safe, re-usable and recyclable materials.

No data, no market!

While the FCM Regulation and its implementing measures introduce traceability and documentation requirements to various degrees, experience to date demonstrates severe

⁶ See further CHEM Trust. [Chemical cocktails – The neglected threat of toxic mixtures and how to fix it](#). March 2022.

⁷ EFSA. [Recent developments in the risk assessment of chemicals in food and their potential impact on the safety assessment of substances used in food contact materials](#). January 2016.

⁸ BEUC. [Towards safe and sustainable food packaging](#). May 2021.

shortcomings in the information available to control authorities, in the supply chain, and to the public. A market survey⁹ by five German consumer associations noted for example incomplete documentation in eight inspected declarations of compliance for plastic films. In no single statement were all mandatory entries completed, while a majority failed to provide information needed to ensure safety during subsequent production stages. Similar severe shortcomings were documented by the REFIT evaluation.¹⁰ This lack of information is unacceptable, and urgently needs to be addressed.

Accordingly, we recommend introducing obligations for business operators to perform a safety assessment of their food contact materials and articles, including of the chemical mixtures migrating from finished products. These requirements should be established as a joint supply chain obligation based on a duty to transfer safety-related information from one supplier to the next in the manufacturing chains. Such requirements would not only increase the available information in the supply chain but would likely also incentivise industry to reduce the significant number of substances and processes used to fewer, but better evaluated, ones.

We support overall the options outlined in Q9-11. Documentation should notably be included in product files available to the relevant companies in the supply chain as well as to authorities for a pre-defined duration, e.g. 10 years, to enable systematic spot checks. Specific quality criteria (e.g. accuracy, completeness and hence reliability) related to product files and compliance documents need to be established in legislation and linked to sanctions to ensure adequate quality and traceability of the information transferred along the supply-chain.

The option outlined in Q12 to require third-party compliance verification before FCMs are placed on the market should be explored, but only if strict Member State oversight of Notified Bodies can be guaranteed, cf. below. Mandatory registration of business operators and an obligation to notify the Commission and Member States prior to placing FCMs on the market should be introduced.

FCM manufacturers and suppliers should finally be required to declare the chemical contents of all materials and products sold to consumers. Improved transparency could influence what retailers choose to buy, and hence what materials and products would become available for consumers, including pregnant women and parents with small children. Consumer organisations and other NGOs could further contribute to disseminating information about chemicals in food packaging in a way that is understandable to consumers. Public access to this information would also greatly facilitate efforts to identify chemicals of emerging concern through scientific research.

Zero tolerance for non-compliance

Enforcement of EU FCM legislation remains woefully incomplete: Member State official controls of FCMs are in general weak, not sufficiently effective, and considered a low priority, as documented by the REFIT evaluation. Member States thus in reality enforce compliance for only a fraction of regulated substances (<5%) that have high visibility and/or for which dedicated measures exist or are easy to test for.¹¹

⁹ Verbraucherzentrale. [Kunststoffverpackungen bei Lebensmitteln: Sicherheit und Transparenz. Bundesweite Herstellerbefragung eine Gemeinschaftsaktion der Verbraucherzentralen](#). December 2014.

¹⁰ European Commission. [Study on the use of compliance documentation in official controls and in the supply chain](#). April 2022.

¹¹ European Commission. [Evaluation of the legislation on food contact materials – Regulation \(EC\) No 1935/2004](#). SWD/2022/0163 final. June 2022.

There must be zero tolerance for companies breaching EU chemicals laws, as stated in the Chemicals Strategy. Therefore, a revised FCM framework must:

- **Ensure that Member States significantly increase their enforcement capacities.** Member States need to tackle the insufficient number of official controls and compliance issues in FCM supply chains. New obligations for businesses operators to perform and notify safety assessments of their food contact materials would in parallel greatly facilitate official controls, cf. above.

To reduce dependency on public finances, we further recommend extending to FCMs the option under the Official Controls Regulation (OCR) for Member States to collect fees from operators to cover the costs of performing official controls. Fees should notably be calculated so as to reward operators with a consistent good compliance record. Dissuasive sanctions are in parallel needed to deter non-compliance. Repetitive infringements should be considered an aggravating circumstance and a basis for higher penalties, as recommended by the High-Level Roundtable on Chemicals.¹²

- **Promote coordinated EU enforcement action,** including through joint testing. Official controls should be shared, coordinated, and streamlined throughout Europe, including through EU-agreed functional procedures (e.g. on how to perform controls or how to access documentation). This could also help avoid that the same product is controlled repeatedly, whereas others are not controlled at all. The European Union Reference Laboratory could support this development. As foreseen by the OCR, the Commission should set rules on uniform conditions and frequency of checks for certain products where specific risks or serious breaches of legislation have been continuously identified, such as online sales or imported goods.
- **Reinforce compliance checks.** The outlined options to require pre-market compliance verification by Notified Bodies combined with the use of Delegated Bodies to support Member State official controls hold potential to improve compliance, although details on how this would work in practice are also absent from the IIA and the public consultation. As such, we insist that this option is only acceptable if strict Member State oversight of such private entities – and ultimate enforcement control can be guaranteed.

Safeguards are notably needed to ensure that these entities have the requisite technical and scientific competences to carry out their assigned responsibilities. Strong legal provisions are further needed to guarantee their independence, including protections against potential conflict of interest, while their operations must be monitored and audited on a regular basis to ensure that they perform their duties correctly. This should also include clear rules related to reporting obligations and transparency so as to enable scrutiny by the public. Where concerns are identified, competent authorities must act quickly and without delay including to revoke the delegation.¹³

New requirements for third-party compliance verification likewise requires that a sufficient number of Notified Bodies with the requisite competencies are available to implement them. Thus, a lack of qualified Notified Bodies risks delaying application of new compliance requirements, and potentially the entire revised framework, as sadly illustrated by the severe delays in applying the new Medical Devices Regulation.

- **Introduce new tools to control online sales,** including a clear definition covering the role and responsibilities of online marketplaces. Consumers buy more and more products online, including through online marketplaces or web shops based outside of the EU. This trend presents new safety risks for consumers, as evidenced by the coordinated enforcement action on 'bamboo' plastic tableware.¹⁴ A recent test by ten

¹² High-Level Roundtable on the Chemicals Strategy for Sustainability. *Enforcement and compliance of chemicals legislation*. November 2021.

¹³ See further BEUC. [EU proposal for a review of Official Controls – BEUC comments](#). July 2013.

¹⁴ [Bamboo-zling. EU Enforcement Action on plastic Food Contact Materials \(FCM\) made of bamboo 'powder'](#)

BEUC members likewise highlighted¹⁵ concerns for silicone bakeware purchased through online marketplaces such as AliExpress or Amazon.¹⁶

A revised FCM framework must complement and reinforce compliance with the new obligations for online marketplaces established under the Digital Services Act and under the General Product Safety Regulation. Consequently, we recommend introducing a possibility to hold these actors liable for non-compliance where no other responsible economic operator can be identified. Online marketplaces should also be obliged to verify the identity of the responsible person for products sold on their sites before the products are being placed on the market, as well as to carry out random spot check before and while products are available for purchase by consumers.

- **Empower consumer organisations**, in line with the EU Consumer Agenda.¹⁷ Our members play an essential role as market watchdogs and in defending the rights of consumers. To strengthen that role, we recommend including the FCM Regulation in the Annex to the CPC Regulation, so as to allow consumer organisations to notify authorities of suspected infringements and to give their opinion about investigations or infringements. Stronger cooperation between consumer organisations and control authorities could thus contribute to improving compliance, while also enabling authorities to benefit from consumer groups' daily contact with consumers.

We likewise recommend including the FCM Regulation in the Annex to the Representative Actions Directive. This would enable consumers to bring group actions to obtain compensation when their rights have been harmed, e.g. as a result of misleading claims. In support, EU and national funding is needed for consumer organisations to develop their capacities with regards to collective redress actions.

FCM labels that work for consumers

Coherent labelling and usage information are essential to enable consumers to use food contact materials correctly. The EU FCM framework has however failed to deliver a labelling scheme that works for consumers. While many consumers for example may be familiar with the 'Glass and Fork' symbol, their understanding of its meaning is significantly lower.¹⁸ The practical value of the Glass and Fork symbol as a communication tool to consumers therefore appears limited.

A revised FCM framework must establish a coherent labelling scheme, e.g. in relation to presentation, durability, and legibility of pictograms. This could also, as outlined in the citizen survey, include new pictograms to communicate correct use of food contact articles (e.g. the temperature at which it can be used, whether acidic or fatty foods can be used, whether it is unsuitable for infants and young children, etc.). Any new pictograms or symbols should however only be considered if developed based on consumer input and must be widely and thoroughly tested among consumers before being introduced. The Commission and Member States likewise need to invest in awareness-raising campaigns to educate consumers about their meaning.

In parallel, it is however crucial to avoid overloading food contact articles with labels and pictograms as it risks confusing consumers and can create a false sense of security and trust. Better labels must therefore not become an excuse for shifting responsibility to the

¹⁵ BEUC. [Half baked: EU food packaging laws need a rethink to keep consumers safe](#). December 2022.

¹⁶ European Commission. *Revision of EU rules on food contact materials (FCMs). Inception Impact Assessment*. December 2020.

¹⁷ European Commission. *New Consumer Agenda – Strengthening consumer resilience for sustainable recovery*. COM(2020) 696 final. November 2020.

¹⁸ See e.g. Verbraucherzentrale. [Bevölkerungsbefragung zu Lebensmittelkontaktmaterialien](#). September 2020.

consumer for using FCM items correctly. Instead, a revised FCM framework should strengthen obligations for business operators to ensure that their FCMs are safe under all reasonably foreseeable conditions, such as for example situations where consumers store hot or fatty foods in single-use ice cream containers.

Digital tools could further play an important complementary role by e.g. improving legibility for visually impaired consumers or by providing more detailed, relevant information, cf. Q6 in the citizen survey and Q11 in the stakeholder questionnaire. Digital labelling must however not replace physical labels or paper leaflets as the means of communicating essential information to consumers. A shift towards digital labelling as an alternative, and not a complement, to physical labels would risk undermining, rather than enabling, informed consumer choices, e.g., by making access to information more time consuming and burdensome or by outright excluding some consumers from information essential to their health and well-being.¹⁹

A revised FCM framework must finally contribute to clean up the EU market from all misleading green claims and labels.²⁰ German consumer group, Stiftung Warentest has previously warned²¹ that many bamboo-based, re-useable cups mislead consumers with claims advertising the recyclability and biodegradability of cups that neither degrade in the environment nor within industrial composting facilities. In 2021, four BEUC members likewise found²² that popular alternatives to single use plastic tableware mislead consumers with unsubstantiated green claims. This situation creates confusion among consumers and makes it difficult for them to identify the products that are more environmentally friendly than others. A revised FCM framework needs to strengthen the protections against misleading claims, while control authorities need to increase their focus on such claims, along in general with insufficient, ambiguous, or missing labelling.

ENDS

¹⁹ See further BEUC. [Why moving essential product information online is a no-go](#). February 2021.

²⁰ See further BEUC. [Getting rid of green washing](#). December 2020.

²¹ Warentest. Die Bambuslüge. Test 8/2019. July 2019.

²² BEUC. [Towards safe and sustainable food packaging](#). May 2021.



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