

GREATER PROTECTION AGAINST HARMFUL CHEMICALS FOR CON- SUMERS

Summary of the Federation of German Consumer Organisations' (vzbv) position paper on the revision of EU and national rules on food contact materials

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Consumers use food contact materials every day, for example food packaging, kitchen utensils and crockery.

Food contact materials include a wide range of products that are made from all kinds of materials, such as plastic, paper, cardboard, aluminium and composites. Many materials turn out to be unsafe because they contain substances that are harmful to human health and can be transferred to the food.

Insufficient regulation of food contact materials

Current regulation of food contact materials is insufficient at both European and national level. Already in 2016, the European Parliament first stated that new rules were urgently needed. Since then, it has been calling on the European Commission to create a better legal framework for regulating food contact materials in order to protect public health.¹

Review of EU legislation on food contact materials not scheduled until 2022

As part of its Farm to Fork strategy, the European Commission has announced that it will be updating the existing legislation on food contact materials.

In July 2020, the European Commission published an evaluation report² and the results of a public consultation and various expert workshops in which it drew some initial conclusions³. The European Commission also announced a feasibility study in preparation for the review. New legislation is scheduled to be in place by the end of 2022.⁴

Patchwork of European and national rules resulting in inadequate protection and legal uncertainty

There are currently very few harmonised European rules. Member States try to make up for this shortfall at national level, resulting in a patchwork of different rules and regulations. These are almost impossible for manufacturers and supervisory authorities to cope with, which means that the level of consumer protection varies significantly among Member States.

¹ European Parliament P8_TA (2016)0384: Implementation of the Food Contact Materials Regulation, European Parliament resolution of 6 October 2016 on the implementation of the Food Contact Materials Regulation (EC) No. 1935/2004 (2015/2259(INI)), 9 September 2020.

² European Commission: Study supporting the Evaluation of Food Contact Materials (FCM) legislation – (Regulation (EC) No. 1935/2004), Final report, <https://op.europa.eu/en/publication-detail/-/publication/3ae0294b-bc0c-11ea-811c-01aa75ed71a1/language-en>, 9 July 2020.

³ European Commission: Evaluation of Food Contact Materials (FCMs), 2020, https://ec.europa.eu/food/safety/chemical_safety/food_contact_materials/evaluation_en, 9 July 2020.

⁴ Chemical Watch: Commission pledges revision of EU FCM legislation by end-2022, 2020, <https://members.chemicalwatch.com/article?id=118474>, 4 June 2020.

Food contact materials contain too many potentially harmful substances for them to be evaluated and monitored

Manufacturers use a wide variety of chemicals in the production of food contact materials. Many of these substances are classified as harmful to health and have been found in potentially hazardous quantities by means of human biomonitoring, which the German Environment Agency (UBA) uses to measure the exposure of different parts of the population to pollutants from the environment. These substances are particularly harmful to children.⁵

Then there are the many substances that are unintentionally created during the manufacture of food contact materials or that form during use.

Some chemicals used in the production of food contact materials are prohibited in other areas, such as textiles and furniture. For example, four phthalates used to soften plastics are subject to restrictions under the EU's chemicals regulation REACH⁶ due to their toxicity. Food contact materials are explicitly excluded from the scope of this restriction⁷, even though the report on the reasons for the restriction specifically stated that up to 75 percent of the intake of the phthalate DEHP may be attributable to food.⁸

Current risk and hazard assessment practice does not sufficiently protect human health

Current practices for assessing the risk of chemical pollutants do not include an evaluation of every potential source of the chemicals to which consumers are exposed. As well as food contact materials, these sources include building materials, furniture, pesticides, biocides, cleaning products, electronic articles, textiles, toys and cosmetics.

Some substances pose a significant risk to human and animal health and to the environment due to their effect on the hormonal system (so-called endocrine disruptors), even at low doses. Such hormonally active agents can be found in plasticisers, for example. There are no safe levels of these substances, so a regulation based on supposedly 'safe levels' cannot really offer any effective protection of health.

At present, substances that are not intentionally added but are formed during the manufacturing process or during use are not covered by the risk assessment. Moreover, manufacturers may replace substances that have been classified as harmful to health and whose use in certain products has now been prohibited, for example bisphenol A, with other harmful substances from the same group, such as bisphenol S or F. The risk assessment conducted by supervisory authorities is made all the more difficult because

⁵ Menschliche Schadstoffbelastung: Antwort der Bundesregierung auf eine Anfrage der Grünen ('Human exposure to harmful substances: the German government's response to a parliamentary question put by the Green Group'), 2019, <https://dip21.bundestag.de/dip21/btd/19/130/1913088.pdf>, 9 July 2020.

⁶ Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (Regulation (EC) No. 1907/2006).

⁷ European Chemicals Agency: Annex XVII to REACH, <https://echa.europa.eu/documents/10162/aaa92146-a005-1dc2-debe-93c80b57c5ee>, 21 September 2020.

⁸ European Chemicals Agency: Annex XV Restriction Report. Proposal for a Restriction. Substance names: Four Phthalates (DEHP, BBP, DBP, DIBP). <https://echa.europa.eu/documents/10162/63d36637-750b-390c-3410-d0dea806869d>, 21 September 2020.

new substances and manufacturing processes are continuously being developed. Scientific understanding of potential risks often lags behind the supposed innovations.

Many consumers unaware of the risks posed by food contact materials

The safety concept in the European framework regulation for food contact materials, Regulation (EC) No. 1935/2004⁹, assumes that consumers know how they need to handle food contact materials in order to prevent or minimise the transfer of pollutants to their food. Manufacturers conduct safety assessments of materials only under 'normal or foreseeable' conditions of use.

This means that consumers who fail to read information that may be on the packaging could be putting their health at risk. A survey conducted by the Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband – vzbv) in 2019¹⁰ found that consumers often do not notice the information.

Many consumers indeed use food contact materials in ways that are not intended by the manufacturer but are entirely understandable because they help to reduce waste or enable packaging to be reused.

The reuse of plastic containers in particular, but also paper and cardboard, can result in harmful substances being transferred from the packaging to the food. Manufacturers do not take account of the fact that products may potentially be reused. Ice cream tubs, for example, are used to store hot food but, from a safety perspective, were not designed for this purpose.

There is a lack of reliable, standardised symbols, pictograms and usage instructions. Only about half of the survey participants were able to accurately explain the meaning of the wine glass/fork symbol, which was introduced with Regulation (EC) No. 1935/2004¹¹ back in 2004 to indicate that a product is suitable for contact with food.

The usage instructions provided by manufacturers do not currently ensure that consumers can use the products in a safe manner that will not be harmful to their health. The overwhelming majority (86 percent) of those taking part in the vzbv survey admitted, for example, that they had never seen the instructions on the proper use of aluminium foil, which should not come into prolonged contact with acidic or salty food.

The instructions on using kitchen utensils such as plastic spatulas, which should not be in contact with hot food or pans for lengthy periods, were also unfamiliar to the majority of consumers. Around 70 percent of those responding to the vzbv survey said that they had never seen any such instructions about appropriate temperature ranges or heat resistance.

The survey found that the majority of consumers (60 percent) felt ill-informed about the safety and potential health risks of food packaging.

⁹ Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R1935&from=EN>, 4 June 2020.

¹⁰ Vzbv: Safety shortcomings in products intended to come into contact with food, results of an online survey'. 2019, https://www.vzbv.de/sites/default/files/downloads/2020/09/25/20-08-20_befragung_lebensmittelkontaktmaterialien_ergebnisse_1.pdf, 28.09.2020.

¹¹ Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food, <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32004R1935&from=EN>, 4 June 2020.

The foreseeable use of food contact materials by consumers must form the basis of risk assessments and regulation

The reform of European and national legislation on food contact materials must take account of how packaging is actually used and reused and of the way in which crockery and cooking utensils are used on a day-to-day basis.

A simple, clear and standardised communication and labelling scheme needs to be developed so that it is unambiguously clear to consumers how they can use food contact materials in a safe manner.

Supervisory authorities need more resources in order to monitor food contact materials effectively

A study conducted by the European Commission's Joint Research Centre (JRC)¹² in 2017 found a significant shortfall of resources in authorities carrying out official food checks.

There is not simply a shortage of personnel but also a lack of technical equipment for carrying out analyses. Local monitoring cannot adequately keep check on the global flow of goods.

Development of recycling schemes for food contact materials

vzbv supports the objective of making packaging reusable and recyclable in an economically viable manner. However, this must not result in pollutants and unsafe mixtures of materials that are potentially harmful to health being used in particularly risky areas of application, such as food contact materials. Such rules for recycled materials currently only exist for plastic packaging. A conclusive safety assessment has, however, not yet been carried out.

Further requirements that need to be addressed by updated rules on food contact materials

vzbv believes that comprehensive new legislation on food contact materials is urgently required at European level. As this process is likely to take several years, the German federal government should not wait any longer to bring in its own rules in order to provide better protection for consumers' health in the meantime. National rules on printing inks¹³ and mineral oil residue in packaging¹⁴, which were drawn up some time ago but keep being postponed, are just two examples.

¹² Joint Research Centre: Science for Policy report: Non-harmonised food contact materials in the EU: Regulatory and market situation. BASELINE STUDY: Final report, 2016, <https://ec.europa.eu/jrc/en/publication/eur-scientific-and-technical-research-reports/non-harmonised-food-contact-materials-eu-regulatory-and-market-situation-baseline-study>, 4 June 2020.

¹³ European notification of the German draft for the Twenty-first Regulation amending the Consumer Goods Regulation, abbreviated as the Printing Inks Regulation, 2016, <https://ec.europa.eu/growth/tools-databases/tris/en/index.cfm/search/?trisaction=search.detail&year=2016&num=333&mLang=EN>, 1 July 2020.

¹⁴ Federal Ministry of Food and Agriculture: Draft of the Federal Ministry of Food and Agriculture for the Twenty-second Regulation amending the Consumer Goods Regulation, 2017, https://www.bmel.de/SharedDocs/Downloads/DE/_Verbraucherschutz/Produktsicherheit/MineraloelVO_Entwurf.pdf?__blob=publicationFile&v=3, 3 February 2020.

In vzbv's opinion, the new European legislation needs to be based on the following principles and objectives:

- ❖ The precautionary principle must be explicitly incorporated into the new legislation.
- ❖ The rules for all food contact materials should be harmonised with the aim of establishing a European registration process.
- ❖ Manufacturers should be obliged to provide data, particularly on the toxicological effect of the substances and mixtures of materials used and on the transfer of substances to food in the course of everyday use. This data forms the basis for comprehensive safety assessments and monitoring by European and national supervisory authorities. Products should not be allowed onto the market without this data.
- ❖ A strict minimisation principle needs to be in place that obliges manufacturers to make sure that there is as little transfer of substances as possible from the food contact material to the food, irrespective of the toxicological analysis.
- ❖ The use of particularly risky substances in food contact materials should be prohibited. This ban should apply to entire substance groups, especially organofluorines, phthalates and bisphenols. It must also apply to substances that may cause cancer, genetic changes or reproductive problems and to substances that act as endocrine disruptors, regardless of evidence about their transfer to food or the use of a functional barrier. A negative list should be drawn up for such substances.
- ❖ The future registration of food contact materials and the substances used in them should be based on the fundamental reform of hazard and risk assessments. For example, registration should not specify particular maximum levels for individual substances. Instead, a toxicological analysis should be carried out on the combination of all of the substances that might be transferred from the food contact material to the food. This must include substances that are formed after the manufacturing process or while the product is being used. The risk assessment should also cover all sources of harmful chemicals so that it is possible to carry out a safety assessment based on total exposure.
- ❖ Foreseeable and normal use must be the starting point for permitted product designs and hazard assessments.
- ❖ Recycling schemes for food contact materials must also be developed in such a way that there is no danger to health.
- ❖ A comprehensive and standardised communication and labelling scheme needs to be developed for food contact materials that includes binding rules on product claims, warnings and usage instructions and on declaring the substances contained in the product.
- ❖ Supervisory authorities in charge must attach a high priority to the safety of food contact materials. Staffing and technical equipment need to be increased significantly; products that may potentially be harmful to health must be taken off the market without delay.
- ❖ The European Commission and national governments must urgently make a start by prohibiting entire substance groups – especially organofluorines, phthalates and bisphenols – as a 'horizontal solution'. Moreover, the legally permitted maximum levels for the release of toxic elements (e.g. arsenic) and toxic heavy metals (e.g. lead in ceramics) must be further reduced.