

GREATER PROTECTION AGAINST HARMFUL CHEMICALS FOR CONSUMERS

Food packaging, utensils, crockery and other food contact materials need to be better regulated

The Federation of German Consumer Organisations (Verbraucherzentrale Bundesverband e.V.; vzbv) is a non-governmental organisation acting as an umbrella for 43 German consumer associations. We represent the interests of consumers in public and vis-à-vis legislators, the private sector and civil society.

vzbv welcomes the initiative taken by the European Commission to revise the regulatory system for food contact materials (FCMs) at European level and to shift the focus onto the final product. vzbv would like to highlight the following points:

- The revision of the legal framework for FCMs is overdue and must be carried out swiftly. The European Commission needs to follow a precautionary approach, establish a reformed risk and hazard assessment and management system for all FCMs.
- The European legislator must adopt a generic ban on the most harmful substances for entire substance groups regardless of their level of migration into food. Grouping of substances will prevent substitutions with similar and equally harmful substances.
- vzbv proposes a harmonised approval and control scheme for FCMs based on two complementary principles: 1) binding rules on substances that might or not be used in FCMs and 2) mandatory and improved safety documentation for all FCMs provided by the manufacturers.
- The European legislator must develop a standardised and comprehensive communication and labelling scheme for FCMs. This consideration is still missing in the European Commission's Inception Impact Assessment.
- Official controls to protect consumers' health must be performed by authorities, as a principle, and must remain the prerogative of the state.

Harmful substances have regularly been found to migrate from packaging to food, often in concentrations that could pose a danger to health or could adversely affect the smell or taste of the food. Authorities in charge often lack sufficient personnel or the necessary expertise to deal with the issue and therefore barely analyse this product group at all. They also lack data with which to assess risks and hazards. Safety checks do not work and lag behind the latest scientific findings. vzbv therefore welcomes the European Commission's effort to propose a new legal framework.

VZBV'S POSITION ON THE EUROPEAN COMMISSION'S OBJECTIVES

❖ **A. Shifting the focus onto final materials:** vzbv welcomes the European Commission's shift of focus onto the final FCM. vzbv agrees that combination effects of different substances and materials as well as non-intentionally added substances (NIAS) have to be considered when assessing the safety of FCMs. The European Commission correctly highlights in the Inception Impact Assessment that "self-regulation via industry guidance has reached neither the necessary level of implementation nor agreement by all actors on appropriate standards". Therefore, self-regulation must not become a cornerstone of the new framework.

In contrast, there is an urgent need for a strict European approval and control process for all FCMs. Only safe FCMs should be allowed to be placed on the market. vzbv proposes a harmonised scheme for all FCMs based on two complementary principles: Firstly, an approval scheme for substances used in all FCMs is necessary. This should result in positive and negative lists that define which substances may (not) be used in which product areas under which circumstances. Secondly, manufacturers must provide safety documentation for all final products they put on the market. They should have to prove that no harmful substances have been used in the manufacturing process and that no potentially harmful non-intentionally added substances (NIAS) will migrate into the food under normal and foreseeable conditions of use. This assigns the burden of proof to the manufacturer, in line with the "no data, no market" principle established by the REACH Regulation.

❖ **B. Prioritising the assessment and management of substances:** vzbv welcomes the generic approach to the assessment and management of "tier one" substances in line with the "one substance, one assessment" approach outlined in the Chemicals Strategy. In this context, it is necessary to pay special attention to substances in FCMs that pose a particular risk, such as carcinogenic, mutagenic and reprotoxic, endocrine disruptors and persistent, bioaccumulative and toxic substances. For these substances, the new regulation must impose a ban on entire groups of substances. Grouping is necessary to stop manufacturer from replacing one harmful substance from the same group with another one with similar properties. Functional barriers or evidence of low levels of migration of these most harmful substances into the food are not an acceptable solution. The goal should be overall safe FCMs and the elimination of especially carcinogenic, mutagenic and reprotoxic substances from consumer products altogether.

vzbv agrees that specific groups such as children and pregnant women need better protection against harmful chemicals. At the same time, all FCMs need to be safe for everybody, including the most vulnerable groups of the population. Products that do not meet these standards must be banned from the market. The introduction of further differentiations would present the enforcement authorities with new problems. Pregnant women consume the same products and use the same crockery as the rest of the population.

❖ **C. Supporting safer and more sustainable alternatives:** vzbv supports the objective to make packaging reusable and recyclable in an economically viable manner. vzbv found that 96 percent of consumers wish to create less packaging waste. For consumers it is, however, still difficult to make more sustainable choices. 63 percent of fruits and vegetables sold in supermarkets in Germany are pre-packed.¹ vzbv therefore welcomes the European Commission's effort to promote sustainable alternatives. Rules for recycled materials currently only exist for plastic packaging. A conclusive safety assessment for materials from recycled plastics has, however, not yet been carried out. This process needs to be finalised swiftly. As a principle, recycled and re-used material must be as safe as other FCMs.

❖ **D. Improving quality and accessibility of supply chain information for compliance and enforcement:** vzbv highlights that stepping up enforcement of rules on FCMs is crucial to identify unsafe products. In Germany in 2019, less than three percent of all official controls were performed on FCMs.² A patchy legislative framework, a multitude of recommendations and the absence of supply chain information make it difficult for competent authorities to perform their tasks. vzbv therefore welcomes the European Commission's proposal of a fully digitalised system for Declarations of Compliance. Such a system must ensure that the economic actors provide safety documentation throughout the supply chain as well as evidence related to safety assessments. This system can contribute to facilitating the work of competent authorities. Only FCMs that are accompanied by comprehensive safety documentation should be allowed to be placed on the market. Ultimately, the system needs to be at the heart of an EU-wide approval scheme for all FCMs. The safety documentation can only be meaningful and effective if there are clear and comprehensive rules in place. Positive and negative lists can create a framework to carry out safety assessments and document compliance.

Imports from non-EU countries are often completely beneath the authorities' radar. This is illustrated by the example of bamboo-based plastic cups that are mostly imported into the EU. It was Stiftung Warentest who flagged that these cups are likely to release high amounts of melamine and formaldehyde, two substances suspected to cause cancer.³ It was only after Stiftung Warentest published their findings that authorities in Germany placed the issue higher on their agenda and increased product testing and consequently product recalls.

❖ **E. System for ensuring compliance of the final FCM:** Protecting the health of citizens and effectively enforcing the related rules is part of the core public services a country provides to its citizens. It is crucial that only institutions that are independent of economic and political interests and solely committed to the

¹ Verbraucherzentrale Bundesverband: Verpackungsmüll – weniger ist mehr, 2020, https://www.vzbv.de/sites/default/files/2020_vzbv_faktenblatt_verpackungsmuell_neu.pdf, 04.01.2021

² Bundesamt für Verbraucherschutz und Lebensmittelsicherheit, Jahresbericht 2019 zum mehrjährigen nationalen Kontrollplan, 2020, https://www.bvl.bund.de/SharedDocs/Downloads/01_Lebensmittel/06_mnkp_dokumente/mnkp_Jahresbericht_2019.pdf?__blob=publicationFile&v=5, 04.01.2021

³ Stiftung Warentest: Bambusbecher im Test, 2019, <https://www.test.de/Bambusbecher-im-Test-Die-meisten-setzen-hohe-Mengen-an-Schadstoffen-frei-5496265-0/>, 04.01.2021

welfare of the population take final decisions related to health protection. Various scandals around medical devices have shown the limits of the delegation of competences. Instead, it is essential to significantly increase the specialist staffing and technical equipment of the competent authorities and enable them to immediately remove unsafe products from the market. The delegation of competences related to public health should only be possible in a well-defined framework and with sufficient safeguards in place, in line with chapter III, Regulation (EU 2017/625).

ADDITIONAL CONSIDERATIONS

❖ **Support consumers to use food contact materials safely**

A representative consumer survey found that 85 percent of consumers consider labelling of FCMs important. A majority of 60 percent of consumers does not feel sufficiently informed about health risks linked to FCMs. Only 48 percent recognise the glass and fork symbol.⁴ vzbv demands that the European Commission develops a standardised and comprehensive communication and labelling scheme for FCMs that includes binding rules on product claims, warnings and usage instructions and a list of substances contained in the product. The foreseeable and normal use must be the starting point for product designs and hazard assessments. These considerations are currently lacking in the Inception Impact Assessment.

❖ **Positive lists ensure legal certainty and product safety**

The European legislator needs to draw up comprehensive positive lists to make it clear to companies and authorities which chemicals and materials may be used in which products under which circumstances. By providing clear rules and orientation to manufactures and authorities, positive lists can contribute to facilitating chemical surveillance and enforcement as well as recycling of materials. Positive lists can also prevent that new substances that are lacking toxicity data, will find their way into FCMs without further assessment. The possible workload that comes with the definition of positive lists can be reduced by creating synergies with the work on specific substances that has already been undertaken by Member States' and NGOs such as the Food Packaging Forum. In its recent publication, the Food Packaging Forum identified 12,285 distinct food contact chemicals that are potentially used in the manufacture of food contact materials and articles. 71 percent of these substances have been found to already have publicly available toxicity data.⁵

Positive lists are a well-established approach when it comes to ensuring health and environmental protection. The Cosmetics Regulation includes positive lists specifically for colorants, UV filters and preservatives. The REACH Regulation demands authorisation for use of substances of very high concern. Also, the Drinking Water Directive that was adopted last year, gives ECHA the task to

⁴ Verbraucherzentrale Bundesverband: Befragung Lebensmittelkontaktmaterialien, 2019, https://www.vzbv.de/sites/default/files/downloads/2020/09/25/20-08-20_befragung_lebensmittelkontaktmaterialien_ergebnisse_1.pdf, 28.12.2020

⁵ Food Packaging Forum: FPF publishes food contact chemicals database, 2020, <https://www.foodpackaging-forum.org/news/fpf-publishes-food-contact-chemicals-database>, 04.01.2021

compile and manage an EU positive list of chemicals that can be safely used in materials that come into contact with drinking water.

Contact

*Federation of German
Consumer Organisations (vzbv e.V.)*

Team Food Policy

*Rudi-Dutschke-Straße 17
10969 Berlin*

lebensmittel@vzbv.de