Food contact materials: Review

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EU reviews rules on food contact materials

Published initiative: Revision of EU rules on food contact materials

Update

The European Commission has announced its intention to review the rules on food contact materials. In October 2022, it launched a public consultation on the revision of Regulation 1935/2004, which sets out basic EU requirements for all food contact materials. The responses from this consultation (now closed) will inform the Commission's proposal for a revised Regulation, which is expected in 2025.

What is changing?

The Commission consulted stakeholders (October 2022–January 2023) on the following aspects of food contact materials (FCM) rules.

Scope

- What materials should be considered as FCM?
- What issues should be included within the reviewed legislation? e.g. Allergens, physical safety of materials (such as choking hazards), hygiene and risks from bacteria, environmental concerns?

Safety

- What substances need to be risk managed? e.g. Genotoxic substances, those known or suspected to be carcinogenic, mutagenic or reprotoxic? Known or suspected endocrine disruptors? (Very) persistent bioaccumulative and toxic substances? Immune/neurotoxic substances? Those in nano form?
- Which substances should be prohibited or restricted? Those used in the manufacture of food contact materials; those in the final products; or those that migrate?
- Which are the appropriate tools for risk managers to use? e.g. Migration limits, traceability, labelling, testing?

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Sustainability

- To what extent should sustainability goals be included in this legislation, or should they rather be the subject of environmental legislation?
- How should the sustainability of FCM be assessed? e.g. According to sustainability of the product, life-cycle assessment, impact on the environment only, three pillars of sustainability (social, economic, environmental)?
- Views about the future of various FCM materials.

The Commission has published a Factual Summary report of the consultations (European Commission 2023), briefly summarised as follows.

Sustainability: Respondents agreed that FCM rules should encourage use of sustainable FCM. NGO respondents broadly (51%) supported providing more information regarding the sustainability of FCM; this was considered less necessary by business communities and public authorities (supported by 28–31%). There was also disagreement on the need for specific sustainability requirements to be created for FCM: public authorities considered that this would be better addressed by environmental legislation.

Safety: NGO respondents felt that priority should be placed on risks to the environment and potential allergens, whereas public authorities placed a particular emphasis on allergens. Business respondents prioritised environmental aspects. There was broad agreement regarding the need for traceability, labelling, and testing.

Most respondents argued that declarations of compliance should be mandatory for all FCM, with a fixed format of declaration, but there was disagreement on the need to introduce an approval step for final FCM articles, and on whether companies should be required to share information on the physical and chemical properties of identified substances in FCM.

This feedback will be taken into account in the Commission's proposals for revised legislation.

Why?

The EU's Circular Economy Action Plan (European Commission 2020) sets targets for recycling of single-use plastic beverage bottles and for recycled content for beverage bottles (Single Use Plastics Directive). The FCM market is estimated to be around €100 million per year (European Commission 2022). The demand for FCM, and the technology used to produce them, have advanced considerably since the EU initially established rules in 2004.

A review of current rules is considered necessary due to increased use of recycled materials, and growing concerns about the potential health impact of chemicals used in the production of FCM, in particular recycled plastics (e.g. SAFE 2020; HEAL 2021; Zimmerman et al. 2022).

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Official controls of FCM have been found to have limited effectiveness due to the highly technical nature of the subject and the limited availability of suitable analytical methods. Risks associated with FCM are currently considered by competent authorities to be relatively low, so controls in this area are not prioritised (European Commission 2021). For many FCM there are no specific EU rules, and rules are set by individual Member States, which can complicate the trading of foods throughout the EU internal market. The EU's review is therefore also a response to problems faced by operators (e.g. ACE 2021).

Timeline

The Commission is expected to propose a revision to Regulation 1935/2004 in 2025.

What are the major implications for exporting countries?

There is a general expectation of an increasingly strict legislative framework for many chemicals used in packaging, including polyvinyl chloride (PVC), perfluoroalkyl substances (PFAS), and bisphenols (Zero Waste Europe 2022).

A number of existing problems have been identified by EU Member State competent authorities regarding imports of FCM from non-EU countries (EPRS 2016):

- relevant documentation (declaration of compliance and supporting documents) is not provided
- lack of requirements for proper identification of FCM (e.g. code marking; relevant batches, lots, etc.)
- imports are currently insufficiently controlled by Member State authorities.

AGRINFO stakeholders should anticipate more stringent documentary requirements and controls under the reviewed framework.

Recommended Actions

Exporters of packaged foods should closely monitor changes to the upcoming legislation. In particular, rules regarding compliance and documentation are likely to change, and enforcement of rules on FCM is likely to be enhanced.

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Background

In a 2020 inception impact assessment, the European Commission identified the following problems with existing legislation, which it will seek to address in revised legislation.

Safety issues for non-plastics

For many FCM (e.g. paper and cardboard, metal and glass, adhesives, coatings, silicones, and rubber), no specific EU rules exist. Rules exist at national level in some EU Member States but not in others, raising questions about the adequacy of the existing rules to protect consumers.

Non-functioning internal market

As rules differ across the EU, there are difficulties for both businesses and control authorities in verifying compliance and testing. Harmonised EU rules for non-plastics are intended to ensure a single, EU-wide standard.

Focus on starting substances not final products

Existing rules on plastic materials (Commission Regulation 10/2011) list the substances that are authorised for use in the manufacture of plastic FCM. It sets general and specific migration limits for substances, based on EFSA advice. However, certain manufacturing and recycling processes may create non-intentionally added substances (NIAS). These substances are not subject to authorisation and are the responsibility of the industry operators. Some consider that greater attention must be paid by regulators to final products that include NIAS.

Lack of prioritisation of most hazardous substances

The EU Chemicals Strategy focuses on substances with properties that give rise to the greatest concern – substances that are carcinogenic, mutagenic, and reprotoxic (having a toxic effect on the process of reproduction). But the current FCM rules do not prioritise these substances, and are therefore not coherent with the overall EU Chemicals Strategy.

Transparency throughout the food supply chain

To ensure the safety of FCM, operators and control bodies require details of actions undertaken throughout the supply chain. There are currently digital tools available that can help upgrade and modernise the information flow.

Enforcement

The Commission's evaluation of existing rules identified a poor level of enforcement in EU Member States due to a lack of clear rules for non-plastic materials, inadequate analytical tools and a lack of expertise. The issue of FCM was found not to be a high priority for Member States.

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Switching to safer and more sustainable alternatives

While there is an increasing focus on developing strategies to prevent waste and overpackaging and to increase recycling, the current FCM legislation is not considered to adequately encourage the use of sustainable alternatives. This may disincentivise innovation and hinder the attainment of recycling objectives.

Resources

ACE (2021) Revision of EU rules on food contact materials: Inception impact assessment. Alliance for Beverage Cartons and the Environment.

EPRS (2016) Food Contact Materials - Regulation (EC) 1935/2004 – European Implementation Assessment. European Parliamentary Research Service.

European Commission (2020) A new Circular Economy Action Plan: For a cleaner and more competitive Europe. COM(2020) 98 final.

European Commission (2021) Overview report: Official controls over food contact materials in EU Member States [download].

European Commission (2022) Commission Staff Working Document: Evaluation of the legislation on food contact materials - Regulation (EC) No 1935/2004.

European Commission (2023) Factual Summary report: Public consultation on the revision of EU rules on food contact materials (FCMs) [*scroll down to Download*]

HEAL (2021) Infographic: Harmful chemicals in food packaging are putting our health at risk. Health and Environment Alliance.

SAFE (2020) Recycled plastic in food contaminant materials. Safe Food Advocacy Europe.

Zero Waste Europe (2022) Marrying safety with sustainability in food packaging.

Zimmerman, L. et al. (2022) Implementing the EU Chemicals Strategy for Sustainability: The case of food contact chemicals of concern. Journal of Hazardous Materials, 437: 129167.

Sources

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Regulation (EC) No 1935/2004 on materials and articles intended to come into contact with food

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