

Warning acrylamide law will be “counterproductive”

By Sara Lewis

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A trio of campaign groups have warned the European Commission that its planned regulation on acrylamide will be “counterproductive” as Member States will be allowed to dodge inspection and enforcement requirements.

The [draft regulation](#) will make compliance with industry codes of practice mandatory in a bid to lower levels of the dangerous contaminant acrylamide in food. It will also set benchmark levels to judge if mitigation measures are successful.

In a 7 February letter, Safe Food Advocacy Europe (SAFE), Corporate Europe Observatory (CEO) and Client Earth, argue: “The vague and general content of the codes of practice, as currently drafted, allow Member States to circumvent their provisions even if of a mandatory nature, thus rendering the draft regulation counterproductive.”

This is the second letter that the trio have written to the Commission and follows both the EU executive’s 13 January response and a 31 January discussion in the European Parliament’s Environment, Public Health and Food Safety Committee.

The [first letter](#) pointed out that basing the regulation on hygiene law (regulation 852/2004) plus the EU’s general food law (178/2002) rather than contaminants legislation (regulations 315/93 and 1881/2006) placed the regulation on shaky legal ground and open to a court challenge. It also criticised the choice of benchmark limits rather than having binding maximum permitted levels of acrylamide in food, above which products would be banned.

In its 13 January response to the three, the Commission acknowledged that acrylamide is a contaminant, as identified in the 1993 directive, but argues that it is also a chemical hazard that occurs during processing, we were told. A summary of the letter says the Commission therefore justifies use of the hygiene law as this allows the future regulation “to require food business operators to apply preventive measures to reduce presence of the chemical hazard – acrylamide – in food as low as reasonably achievable to ensure a high level of human health protection”.

The Commission also told the three that using the hygiene regulation does not stop it setting maximum levels for acrylamide in food under the contaminants legislation. Moreover, the Commission told MEPs on 31 January that it planned to set [binding acrylamide limits](#) for certain ready to eat foods.

The EU executive also rejected the trio’s claim that the choice of legal basis affected the procedure used to adopt the regulation. The summary said that the Commission said

that “in any event, there is no impact on the adoption procedure as the procedure with scrutiny is provided for in both regulations.”

But in their second letter SAFE, CEO and Client Earth rejects the Commission’s classification of acrylamide as a chemical hazard as reason to regulate it through hygiene not contaminants law. The three counter: “it is clear that acrylamide is not a consequence of the exposure of food to hazardous agents nor is it introduced in the food supply. Indeed, acrylamide is naturally formed in food when prepared at temperatures higher the 120° and low moisture”.

The three insist: “The wording used by the Commission refers to chemical hazards present in the environment in which food is prepared, conserved, processed, stored and transported”. They underline that the reference to chemical hazards in the hygiene regulation, “refers to external hazards to which food can be exposed, as its annexes contain specific provisions adopted with regards to food premises, rooms where foodstuffs are prepared, treated or processed, movable or temporary premises, transport, equipment requirements, food waste, water supply, personal hygiene, heat treatment and training”.

They add: “It goes without saying that heat treatment, as considered in the hygiene regulation, is limited to food placed on the market in hermetically sealed containers. Indeed the Hygiene regulation has the objective of avoiding the contamination of the food deriving from the heat treatment process of these containers. The chemical hazard stems from the contamination coming from a different substance present in the container”.

The three underline that acrylamide therefore falls within the definition of contaminants in regulation 315/93. They further note that in the hygiene regulation itself “acrylamide is never referred to as a chemical hazard but as a ‘concern’.”

The 7 February letter argues: “It is clear that Regulation 1881/2006 on contaminants is to be considered the appropriate and legal basis of the Draft Regulation as it has the objective of reducing the presence of contaminants in food by establishing levels that are toxicologically acceptable and by ensuring that maximum levels are as low as reasonably achievable, the so-called ALARA standard”.

They go on to point out: “This is the approach that has been adopted by the Commission in other similar occasions as, for example, with regards to 3-monochloropropane-1,2-diol (3-MCPD), contaminant that has been subject to maximum levels in accordance with the regulation on contaminants”.

The three note that enforcement of the codes of practice as well as what penalties to apply when companies fail to comply is a matter for Member States. “It is, therefore, fundamental that the provisions, preventive measures and benchmarks contained in the draft regulation are of a mandatory nature, precise and accurate in order to avoid an excessive discretion of Member States on the matter and avoid that the draft regulation be considered as counterproductive”.