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SAFE's feedbacks on European Commission's draft act on Food safety – recycled plastic in food packaging (updated rules)

About Safe Food Advocacy Europe – SAFE

SAFE – Safe Food Advocacy Europe was created with the aim of ensuring that consumer's health and concerns remain at the core of the EU's food legislation. SAFE is currently the only Brussels-based NGO specialised in the protection and representation of EU consumers in the food sector.

SAFE strives to ensure safer food standards for consumers by monitoring the EU food legislation process and cooperating with EU stakeholders to draft comprehensive food regulations. SAFE notably supports the development of policies and awareness-raising actions which jointly address health, environment, food safety and sustainability, all-the-while being involved in several EU-funded projects aimed at reducing the environmental impact of the food sector, increasing sustainability and promoting healthier food environments for consumers.

Introduction

Food contact materials (FCMs) are defined as all the materials and articles that are intended to be put into contact with food and beverages or will presumably be in contact with food or beverages. They include food packaging, kitchen equipment, tableware, machinery used in processing food, and objects that are used to transport food. These items can be made from a variety of materials including plastics, rubber, paper, and metal.

Numerous concerns have been raised regarding the **health risks FCMs** might pose for consumers during exposure, as well as the **efficiency of EU legislation** in ensuring the safety of these materials. Among them, SAFE focuses on the emerging high-risk issue of the increasing use of recycled plastics in FCMs, which could negatively affect human health through the migration of harmful chemical substances, integrated before and/or during recycling processes, from FCMs into food.

Drawing attention to health risks associated with recycled plastics in FCMs and the shortcomings of relevant legislation, SAFE would like to suggest the European Commission to a few important considerations in the light of the upcoming initiative to ensure European consumers' health.

1. Shortcomings on the current draft act

Even though plastic recycling used for FCMs is regulated rather strictly in the EU, the health risks associated with recycled plastic FCMs indicate the need for improved legislation in order to better protect consumers' health. Hence, SAFE would like to elaborate on three main shortcomings in the present draft act on recycled plastic FCMs, namely:

1. Lack of attention on final articles
2. Issues on enforcement and implementation
3. Stricter risk assessment procedure for assessment of new technologies

1. Lack of attention on final articles

One of the primary shortcomings of current proposal on recycled plastic in FCMs is that it focuses mainly on starting substances and recycling process with not much attention is paid to the final articles. In fact, Article 8 on "*Post-processing and use of recycled plastic materials and articles*", does not address properly the complexity of non-intentionally added substances (NIAS), including external contaminants as well as by-products of reaction and degradation occurred during manufacturing, use, waste management, and recycling processes, which are present in final materials and articles.

The presence of these NIAS pose a challenge to assessing the safely of the finished materials, because it is not always possible to identify NIAS since many of them are uncharacterized impurities and by-products, and also unpredictable from the known starting substances[1]. In recycled plastics, NIAS even reach higher levels of complexity on account of the materials intended for recycling that may contain intrinsic contaminants such as dyes, additives, and their degradation products. Thus, the presence of NIAS should be systematically monitored in recycled FCMs.

Furthermore, recycled plastic FCMs may be degraded with a greater number of chemicals that are accumulated when materials are recycled several times. Previous use and misuse of plastic packaging may also contribute to the presence of unwanted and unexpected contaminants, and non-food grade materials may enter the recycling stream[2]. Also, many types of plastics absorb chemicals during waste management which are difficult to remove during the recycling process.

Introduce sorting systems that separate FCM from non-food grade plastics represents a challenge. Therefore, risk assessments of the recycling input and processes are clearly insufficient to ensure the safety of the final materials and articles.

2. Issues on enforcement and implementation

We welcome the para.16 of the draft aiming "*to ensure that plastic materials and articles are subject to conditions throughout the recycling process that ensure their safety and quality, and to facilitate enforcement and the functioning of the supply chain, rules should be established on the operation of all recycling stages, from pre-processing to decontamination and to post processing*".

In the context of this new legislation, SAFE believes that further effort should be made to ensure a better implementation and monitoring framework for recycling materials. In particular, the current act states that "*to ensure uniform application of official controls of decontamination installations independent of where they are located, it is therefore appropriate to define appropriate control techniques, as well as rules that define when recycled plastic should be considered to be not in compliance with this Regulation*"[3]. Further appropriate technics are not mentions, although the draft act acknowledges the lack of specific rules to control decontamination installation.

In addition, this mechanism of enforcement has proved to be weak, as discussions convey. Official control, which is carried out by Member States' Competent Authorities, are said to be ineffective due to lack of expertise and necessary guidance[4]. Some studies indicate that weak enforcement may have resulted in the deliberate recycling of non-food plastics into new food packaging. One of these studies analyses ten black polymeric food contact articles purchased on the European market[5].

[1] Muncke et. Al. (2017). Scientific challenges in the risk assessment of food contact materials. Environmental Health Perspectives (Online), 125(9) doi: dx.doi.org.ez.statsbiblioteket.dk:2048/10.1289/EHP644

[2] Geueke et al. (2018).

[3] Para.21 of the draft act.

[4] European Commission. (2019). BTSF Workshop on Food Contact Materials. https://ec.europa.eu/food/sites/food/files/safety/docs/cs_fcm_eval_btsf_20190604_controls-sum.pd

[5] Yu, G., Bu, Q., Cao, Z., Du, X., Xia, J., Wu, M., & Huang, J. (2016). Brominated flame retardants (BFRs): A review on environmental contamination in China. Chemosphere, 150, 479-490.

The results show 7 out of 10 samples contained a bromine level exceeding the authorized one and typical elements present in Waste Electric and Electronic Equipment were detected either at trace level or at elevated concentrations. Brominated samples containing flame retardants are regularly found in plastic items intended for FCMs, which is a clear indication that waste electric and electronic equipment has been used in the recycling process, which is prohibited.

3. Stricter risk assessment procedure for assessment of new technologies

We welcome the intention mentioned in para.17 of the draft act to "*ensure that the possibility to place on the market recycled plastic materials and articles produced with new technologies remains limited to the time necessary to collect the information and experience necessary for the assessment of the technology, rules should be laid down regarding the initiation of that assessment*".

However, SAFE would like to invite the Commission to provide further details on the risk assessment carried by EFSA to evaluate the safety of recycling technologies. The current draft act does not encourage the participation of independent researchers and institutions to scientifically review the data submitted. Therefore, to ensure transparency and objectivity of the risk assessment procedure, SAFE believes that the collaboration with independent research centres to conduct the risk assessment is necessary, and the related data should also be collected by an independent organisation, not by the industry applying for the approval of the recycling process.

Moreover, increasing the number of processes for recycled plastic in FCMs might prevent a proper safety assessment that should protect consumers to come into contact with hazardous substances. SAFE is highly concerned that this swift move may lead to potential improper evaluation and authorisation of recycling processes which may hamper consumers' health.

Conclusions

While we highly appreciate the Commission's efforts in approaching a new Circular Economy Action Plan, we call the attention for the importance of a great concern towards the presence of non-intentionally added substances (NIAS) in recycled plastic FCMs, as well as the risk of cocktail effects when consumers are exposed to multiple substances simultaneously.

SAFE would propose the following recommendations for the adequate protection of consumers' health:

- A novel approach to FCMs risk assessments that **focuses also on final materials and articles** should be developed, rather than solely on the starting substances and the recycling process
- A **deeper harmonisation is required in enforcement controls** of the recycling processes and decontamination processes. SAFE believes better framework rules, helping Member States to perform regular monitoring and controls more efficiently as well as ensuring that they have the necessary staff trained to do such controls, will result in safer food for consumers.
- The draft act should encourage and **give space to independent research centres** to participates in the data collection and safety evaluation processes, in order to ensure objective and non-bias assessments.

We deeply thank the Commission to give the chance to collaborate in the elaboration of this important legislation, and we highly support its realization in order to address the Green Deal objectives.