

The Consumer Voice in Europe

TIME IS RIPE TO REPACKAGE FOOD SAFELY

BEUC position on the regulation of Food Contact Materials



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Why it matters to consumers

On its way from farm to fork, our food comes into contact with many different materials and products, such as plastic packaging, paper wraps, kitchen utensils or ceramic tableware. While these materials are essential to how we store, handle, transport, preserve, and ultimately consume our food, they may also impair the quality and safety of foodstuffs. Chemicals present in packaging can for example contaminate our food, thereby creating risks for consumer health. Existing EU legislation – meant to safeguard consumers against such risks – provides insufficient protection. An overhaul of the EU food packaging laws is therefore urgent.

Recommendations

The EU food contact material (FCM) regime fails to adequately safeguard the health and interests of consumers. In fact, the deficiencies of the current system are widely acknowledged, including by the European Parliament and Commission. As such, a reform of the EU regulatory framework is urgent.

BEUC, the European Consumer Organisation insists that a reformed EU FCM regime must:

- **Regulate all FCMs**, including novel materials such as bamboo or palm leaves. New rules to control all migrating chemicals are required, while existing legal limits should be revisited to better protect consumers.
- **Establish a precautionary approach to risk management**. Substances of high concern, such as endocrine disruptors or chemicals that may cause cancer, change DNA or harm reproductive health should be automatically prohibited in FCMs.
- **Make FCM labels work for consumers**. The obligation for manufacturers to provide instructions for safe and appropriate use of FCMs needs to be clarified to ensure that risk assessments correspond to actual consumer behaviour.
- **Shift the burden of proof** by requiring manufacturers to perform and notify safety assessments of their food contact materials. Member State authorities must rigorously police the accuracy and reliability of safety assessments.
- **Ensure effective enforcement**. Member States must dedicate sufficient resources for official controls of FCMs, while the European Commission should promote a systematic enforcement strategy to ensure that EU FCM policy translate into real consumer protection.
- **Improve transparency to enable informed consumer choice**. Clear and readily accessible information about chemicals present in or migrating from FCMs is essential to facilitate identification, traceability, and handling of exposure sources.
- **Guarantee the same, high level of protection for FCMs made from virgin and recycled materials**. A successful circular economy can only be achieved if consumers are confident that secondary raw materials are safe.

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The EU rules on food packaging fail to keep consumers safe

Food contact materials¹ protect food from physical damage, soiling, and microbial spoilage, thereby reducing food waste. But FCMs can also adversely impact the quality and safety of food throughout the entire food chain. Chemicals present in food contact materials are for example known to migrate into, and thus contaminate foodstuff, potentially creating risks for consumer health.

A recent test by four BEUC members showed² that food packaging made of coloured paper and cardboard – such as coffee cups and straws – may contain and release chemicals of concern into food; most of these chemicals have not been risk assessed by the European Food Safety Authority (EFSA). In 2018, consumer groups in Belgium, Italy, and Spain likewise found³ high levels of mineral oil hydrocarbons (MOH) in various food samples, such as pasta, rice, breakfast cereals and chocolate. These contaminants likely originated from recycled paper and board packaging, although batching and/or lubricating oils used during food production is another potential source. Despite a 2012 EFSA warning⁴ that exposure to certain MOH is of concern to human health – including a potential cancer risk – efforts to reduce exposure to MOHs through food remains entirely insufficient.

Chemicals leaching from packaging may be the largest and least controlled source of food contamination.

The exact number of potential food contaminants from FCMs is unknown, but it is enormous. Thousands of chemicals are used in the production of various FCMs, while migrating impurities and contaminants are counted in the tens of thousands, only a fraction of which have been identified. The risk that a few of these unknown substances are harmful is significant. Chemicals migrating from food packaging may thus be the largest and least controlled source of food contamination, exceeding other sources such as pesticides or environmental pollutants by a factor 100.⁵

The EU FCM regime is meant to safeguard the health and interests of consumers, e.g. in relation to information, food preservation, or reuse. Neither is however adequately achieved today;⁶ in fact, the deficiencies of the current system are widely acknowledged, including by the European Commission⁷ and the co-legislator.⁸ In 2016, the European Parliament for example concluded⁹ that the lack of harmonised EU rules for materials other than plastics is detrimental to public health. Parliament therefore urgently called on the Commission to revise the regulatory framework.

¹ Food contact materials are all materials that come into contact with food including packaging and every-day items such as kitchen and tableware as well as those used in professional food manufacturing, preparation, storage and distribution.

² See BEUC. [The EU needs rules on chemicals in coffee cups, straws and other paper food packaging, consumer test shows](#). July 2019.

³ See AltroConsumo, Scivolati sull'olio, *Inchieste* N°332. February 2018.

⁴ EFSA. 2012. Scientific Opinion on Mineral Oil Hydrocarbons. *EFSA Journal* 10(6).

⁵ K. Grob *et al.* 2006. Food Contamination with Organic Materials in Perspective: Packaging Materials as the Largest and Least Controlled Source? A View Focusing on the European Situation. *Critical Reviews in Food Science and Nutrition* 46.

⁶ See BEUC. [Reform EU food packaging rules to better protect consumers](#). May 2019.

⁷ Joint Research Centre. [Non-harmonised food contact materials in the EU: regulatory and market situation. Baseline study](#). January 2017.

⁸ European Parliament. [Report on the implementation of the Food Contact Materials Regulation \(\(EC\) No 1935/2004\)](#). 2015/2259(INI). July 2016.

⁹ *Ibid.*

Against this background, the Commission announced in November 2017 a REFIT evaluation to assess whether the current EU legislative framework for FCMs is fit for purpose and delivers as expected. BEUC, The European Consumer Organisation welcomes the review as a long overdue opportunity to better protect consumers against harmful chemicals in food contact materials and products.

The EU FCM regime: a regulatory relic

According to EU legislation,¹⁰ all FCMs should be safe and inert – that is, not influence the food in a negative way. Except for plastic food contact materials, however, harmonised EU rules to determine compliance with these general provisions largely do not exist. Consequently, demonstrating that food contact materials other than plastics are safe has proven difficult, as illustrated by several food contamination scares originating e.g. from paper food packaging.¹¹

This disparity between detailed EU rules for plastics and the absence of rules for other materials gives rise to severe gaps in consumer protection across the EU. To illustrate, in 2017, five BEUC members found¹² high levels of fluorinated compounds in one third of 65 tested fast food packaging. A 2018 test¹³ by our French member UFC-Que Choisir showed similar results. These compounds, known as PFAS, are problematic for the environment, but are also suspected to impair human health, such as causing cancer, infertility, and obesity. In the absence of detailed EU rules for paper and board FCMs, the use and safety of these compounds remains however unregulated in practice.¹⁴

The absence of EU-wide rules gives way to a patchwork of national rules, protecting consumers unequally, depending on where they live.

In the absence of harmonised EU rules, the FCM Regulation allows Member States to maintain or adopt their own national measures. As highlighted by a 2017 JRC study,¹⁵ the result is a patchwork¹⁶ of different national schemes for risk assessment, chemical safety, compliance documentation, and regulatory approaches. Evidence collected through the JRC study identified around 8,000 substances regulated at national level, some of which are regulated by many Member States, others only by a few. These differences thus imply that European consumers are not guaranteed the same level of protection against harmful chemicals depending on where they live.

¹⁰ Regulation (EC) No 1935/2004 (the FCM Regulation) stipulates that these materials shall not transfer their components into food in quantities that could endanger human health or change the composition, or organoleptic properties of the food.

¹¹ For example, in 2005, reports emerged in Italy that liquid baby milk had been contaminated with isopropyl thioxanthone (ITX), a chemical used in the printing process of the milk cartons. The producer, Nestlé subsequently had to recall the products from the market. In 2009, hundreds of boxes of noodles were withdrawn from sale in Germany after levels of benzophenone almost three times above the European legal limit were found to have migrated from the packaging.

¹² BEUC news, [Harmful substances found in fast food packages across Europe](#), March 2017.

¹³ UFC- Que Choisir, [Fast-food – Des emballages qui font tache](#), March 2018.

¹⁴ See BEUC, [More than a paper tiger](#), July 2019.

¹⁵ Joint Research Centre. *Non-harmonised food contact materials in the EU: regulatory and market situation. Baseline study*. January 2017.

¹⁶ National legislation is in place in 19 Member States with divergent scope setting up more or less detailed requirements. No Member State covers all materials. In most Member States, national legislation does not set out detailed requirements. Limits set out in national legislation are divergent, in particular for migration of heavy metals.

The EU rules on plastic materials do not give regulators sufficient tools to protect consumer health.

The EU rules on plastic materials¹⁷ meanwhile exempt several substances from regulatory scrutiny, including solvents, colourants, and aids to polymerisation. The potential migration of substances formed during manufacture and use, such as impurities, degradation or reaction products – known as non-intentionally added substances or NIAS¹⁸ – is largely neglected. As a result, regulators lack adequate tools to establish whether the chemical mixtures that migrate from plastic materials could endanger human health. Many of the authorised substances have moreover never undergone sufficient and regular scrutiny in light of new evidence, e.g. on their endocrine disrupting properties.

Whereas EU food and chemicals legislation has been modernised over the past two decades, the FCM Regulation is in contrast a regulatory relic firmly rooted in the approach first instituted in 1976. As such, crucial contradictions exist between the EU FCM regime and other EU laws governing chemical and food safety. Current national and EU legislations have moreover largely failed to establish criteria needed to ensure compliance with the objective of a high level of human health protection.¹⁹ Taken together, this situation is unacceptable, and calls for an overhaul of the FCM regime to ensure better protection of all EU consumers.

How the EU should repackage its rules on food contact materials

From a consumer perspective, it is imperative that a reformed EU FCM regime delivers credible answers to known deficiencies, including on non-intentionally added substances, combination effects, and new and emerging risks. BEUC insists that a revised EU FCM Regulation must achieve a coherent, protective approach to the safety of food contact materials and products. We insist in particular on the need for comprehensive, harmonised regulation of all FCMs based on a precautionary approach, combined with a shift in the burden of proof from public regulators to industry, better enforcement and improved information to consumers.

The European Green Deal²⁰ notably commits the Commission to ensure that all packaging in the EU market is reusable or recyclable in an economically viable manner by 2030. While we support this objective, use of packaging wastes in new FCMs can increase both the possible sources of contamination and the amount of chemicals that can migrate from packaging into foods.²¹ A reformed FCM regime must therefore guarantee the same high level of protection for FCMs made from virgin and recycled materials. Our recommendations thus align with the five key principles for future EU legislation on food contact materials developed by a coalition of civil society organisations.²²

¹⁷ Commission Regulation (EU) No 10/2011.

¹⁸ NIAS are not limited to plastics however but occur in all other FCMs as well.

¹⁹ For an extended, critical analysis, see BEUC. [Reform EU food packaging rules to better protect consumers](#). May 2019.

²⁰ European Commission. [The European Green Deal](#). COM(2019) 640 final. December 2019.

²¹ See B. Geueke *et al.* 2018. Food packaging in the circular economy: Overview of chemical safety aspects for commonly used materials. *Journal of Cleaner Production* 193.

²² [Call for new EU legislation on Food Contact Materials to be based on five key principles](#). September 2019.

Regulate *all* FCMs across the EU

A reformed FCM regime must abolish the current 'schizophrenic' distinction between harmonised and non-harmonised sectors to ensure that food contact materials are safe for consumers. Echoing the European Parliament's recommendations,²³ BEUC insists on the need for harmonised EU rules to set strict limits and criteria for *all* FCMs, including novel materials such as bamboo.

Ambitious harmonised EU rules for all FCMs would allow Member State authorities to assess and ensure compliance with the objective of a high level of human health protection. The existing FCM Regulation allows Member States to introduce emergency measures, including product recalls, where new evidence or a reassessment of existing information indicates that the use of a material or product endangers human health. That procedure must be maintained. Where the grounds for a Member State emergency measure is confirmed by an EFSA assessment, a reformed FCM regime should however introduce new obligations for the Commission to adopt within a pre-defined timeframe corresponding EU-wide measures to protect all EU consumers.

Ambitious EU rules for all FCMs would allow Member State authorities to protect consumer health.

As recently observed by EFSA,²⁴ focus moreover needs to shift from the initial substances used to produce food packaging towards regulation of the mixtures that actually migrate from finished materials and products. According to one estimate,²⁵ starting substances thus only constitute three per cent of the migrating material from coatings, with the chemical identity of the remaining migrates largely unknown. Last year, our Norwegian member, Forbrukerrådet, likewise showed²⁶ that reusable plastic bottles leach dangerous chemicals such as phthalates, bisphenols, flame retardants and lead into their content. Disturbingly, bottles marketed to kids were the worst performers in the test.

This situation notably clashes with EU food legislation which applies the principle of strict minimisation: for most food contaminants, producers must seek to avoid contamination, even if there is no detectable health risk. While the EU has established strict pesticide registration procedures and maximum residue levels in food, chemicals migrating from food contact materials in contrast tend to be considered inert by default. However, among the thousands of chemicals migrating from FCMs, some will have toxicological profiles worse than would be acceptable for pesticides – and possibly at higher concentrations.²⁷ Current limit for pesticides is moreover significantly lower than the generic threshold established for migrates from packaging materials. While insufficient control does not necessarily imply a health risk, it does highlight the inconsistent approach towards this significant source of food contamination.

²³ European Parliament. *Report on the implementation of the Food Contact Materials Regulation ((EC) No 1935/2004)*. 2015/2259(INI). July 2016.

²⁴ EFSA. [Recent developments in the risk assessment of chemicals in food and their potential impact on the safety assessment of substances used in food contact materials](#). January 2016.

²⁵ K. Grob et al. 2006. Food Contamination with Organic Materials in Perspective: Packaging Materials as the Largest and Least Controlled Source? A View Focusing on the European Situation. *Critical Reviews in Food Science and Nutrition* 46.

²⁶ Forbrukerrådet, [Drinking bottles leach chemicals](#), August 2018.

²⁷ K. Grob et al. 2006. Food Contamination with Organic Materials in Perspective: Packaging Materials as the Largest and Least Controlled Source? A View Focusing on the European Situation. *Critical Reviews in Food Science and Nutrition* 46.

Progress on finding methods to better control and minimise contamination from food contact materials consistent with the standards achieved in other EU food laws is therefore urgent. BEUC insists that a similar level of safety for starting materials and non-intentionally added substances must be ensured. Consistent with EU food safety legislation, requirements to control migrating materials are needed, while policy makers also need to revisit existing legal migration limits to align food contact materials with other sectors.

A precautionary approach to chemicals in FCMs

Given the enormous number of chemicals potentially migrating into food, the EU needs to rethink its risk management approach to food contact materials. As a starting point, a reformed FCM regime should shift towards risk management based on generic risk considerations:²⁸ in particular, chemicals which may cause cancer, change DNA or harm reproductive health (CMR substances) as well as substances of very high concern identified under the REACH Regulation, should be automatically prohibited for use in FCM – albeit subject to strict derogation criteria inspired for example by the approach taken in the EU Cosmetics Regulation.²⁹ The plastics regulation to some extent already includes an element of this approach, but to better protect consumers it needs to be implemented for all FCMs.

Where health concerns emerge in one material or product, it should automatically trigger risk evaluation in other areas.

Further, a mechanism to facilitate identification and regulation of endocrine disruptors is required. Such a mechanism must account for possible low-dose effects given the scientific uncertainties around the question of whether safe thresholds for endocrine disruptors can be determined at all.³⁰ Finally, a presumption of migration should be introduced for substances of high concern to allow regulation of their presence in FCM in the first place, unless industry can demonstrate that their presence does not present a risk to human health.

In parallel, an explicit mandate for performing mixture risk assessments needs to be introduced in the FCM Regulation. Such a mandate has in part already been established under other EU laws, e.g. on pesticide residues, but needs to be significantly strengthened for FCMs based on clear rules for determining acceptable exposure and risk levels.³¹ This mandate should also promote a more holistic approach to risk assessment: where health concerns emerge for one material or product, it should automatically trigger risk evaluation across legislative 'silos' to fully assess the impact of cumulative exposures from other sources, including from food or other consumer goods.

Safeguards are moreover required to avoid situations where a restricted chemical is replaced with related substances with similar hazardous properties. Growing evidence for example suggests that bisphenol F and S, two common substitutes for the endocrine

²⁸ That is, risk management measures automatically triggered by a hazard classification under the Classification, Labelling and Packaging Regulation, without further assessment of the risk. See M. Postle *et al.* *Study on the regulatory fitness of the legislative framework governing the risk management of chemicals (excluding REACH), in particular the CLP Regulation and related legislation. Evaluation Report.* January 2017.

²⁹ Article 15(2) of the Cosmetics Regulation establishes that a category 1 CMR substance can *exceptionally* be allowed in cosmetic products where a) the substance occurs naturally in food; b) there are no suitable alternatives; c) the exposure is known and d) the Scientific Committee on Consumer Safety finds that use of the substance in cosmetics is safe, taking into account overall exposure from other sources.

³⁰ See BEUC. [Hormone-disrupting chemicals: when will the EU act against these everyday toxicants?](#) July 2016.

³¹ See A. Kortenkamp and M. Faust. 2018. Regulate to reduce chemical mixture risk. *Science* 361(6399).

disruptor bisphenol A (BPA), are also endocrine disruptors.³² Such 'regrettable' substitutions clearly undermine efforts to protect people and the environment. A reformed FCM regime should therefore enable risk assessment and management of groups of chemicals with similar hazard and risk profiles. As correctly observed by the Commission,³³ greater reliance on grouping approaches would accelerate risk management processes – and could also save industry and public authorities the considerable costs entailed by regrettable substitutions.

The EU must make sure to replace hazardous substances with ones for which there is no safety concern.

A precautionary approach is finally needed to better protect the health of consumers in situations where scientific evidence is insufficient, inconclusive or uncertain. While EU risk managers have invoked the precautionary principle in the past, e.g. to prohibit the use of BPA in polycarbonate infant feeding bottles,³⁴ it remains underused. Similar to the General Food Law, BEUC recommends that the precautionary principle should be enshrined in the FCM Regulation as the basis for risk identification, assessment, and management. This would mandate risk managers to better protect consumers against chemicals of concern in the face of scientific uncertainty.

FCM labels that work for consumers

Coherent labelling and usage information are essential to enable consumers to use food contact materials correctly. The EU FCM regime has however failed to deliver a labelling scheme that works for consumers. While many consumers may be familiar with the 'Glass and Fork' symbol,³⁵ their understanding of its meaning is significantly lower.³⁶ The practical value of the Glass and Fork symbol as a communication tool to consumers therefore appears limited.

The concept of 'intended use' and the self-declaration of compliance moreover conflict with a coherent labelling scheme. The concept of 'intended use' thus implies that products are only safe if they are used as intended by the manufacturer. For consumers, it is however often unclear from the packaging how to use FCM. This leads to risky consumer practices, who for example may store hot or fatty foods in single-use ice cream containers. Even if the 'Glass and Fork' symbol was well known, it can still mislead consumers to believe that the safety of FCMs has been adequately assessed and that they do not contribute to food risks/contamination, *cf.* above. As a result, the EU FCM regime may systematically underestimate health risks since actual consumer behaviours are not accurately accounted for in risk assessment and management processes.

A reformed EU FCM regime must address these deficiencies as a priority. A coherent labelling scheme, e.g. in relation to presentation, durability, and legibility of pictograms,

³² See e.g. J. R. Rochester and A. L. Bolden. 2015. Bisphenol S and F: A Systematic Review and Comparison of the Hormonal Activity of Bisphenol A Substitutes. *Environmental Health Perspectives* 123(7).

³³ European Commission. [Findings of the Fitness Check of the most relevant chemicals legislation \(excluding REACH\) and identified challenges, gaps and weaknesses](#). COM(2019) 264 final. June 2019.

³⁴ Commission Directive 2011/8/EU.

³⁵ Verbraucherzentrale. *Bevölkerungsbefragung zu Lebensmittelkontaktmaterialien*. Forthcoming.

³⁶ The Glass and Fork symbol indicates that materials or products are intended for food contact. Manufacturers are required to place this symbol, or other labelling or text meaning the same, on their FCMs, along with specific use instructions 'if necessary'. FCMs that by their characteristics are clearly intended to come into contact with food, e.g. a glass, are not required to display the Glass and Fork symbol.

A better labelling scheme needs to be developed to ensure coherent presentation, durability, and legibility of FCM pictograms and use instructions.

needs to be developed and enforced. A market survey by five German consumer associations for example found³⁷ that use instructions were given exclusively in the form of pictograms without further wording. The pictograms were however rarely self-explanatory and often difficult to read because the imprint was blurred and kept in the same colour as the product. Control authorities need to focus more on such insufficient, ambiguous, or missing labelling.

Comprehensive guidance further needs to be developed to clarify the obligations for business operators to provide instructions for safe and appropriate use of FCMs to ensure that risk assessments correspond to actual consumer behaviour. In parallel, we strongly encourage the Commission and Member States to invest in awareness-raising campaigns to educate consumers about labels and chemicals in FCMs, so they better understand the correct use of specific food contact materials and products (e.g. repackaging, use in microwaves, etc.).

Shift the burden of proof

Industry – not the public – must bear the burden of proof for the products that are on the market. BEUC therefore insists that a reformed FCM regime shifts the effective burden of proof from public regulators to industry. The general principle embodied in EU chemicals legislation is that chemical risks should be controlled, mitigated, or justified by their creators. For this reason, the REACH Regulation introduced the principle of ‘no data, no market’ requiring manufacturers to demonstrate safe use of their chemicals through a Chemical Safety Report. FCMs are however exempted from this obligation, as these uses were considered “adequately addressed by other EU legislation”³⁸ according to legislative proposal for REACH.³⁹ Yet, the FCM Regulation does not sufficiently compensate for this ‘gap’. The result is a serious disconnect between legal requirements and the data that is generated by manufacturers along the supply chain.⁴⁰

While the FCM Regulation and its implementing measures introduce traceability and documentation requirements to various degrees, experience to date demonstrates severe shortcomings in the information available to control authorities, in the supply chain and to the public.⁴¹

A control campaign in the plastics sector for example found⁴² that virtually no data was available on substances used other than the specifically regulated monomers and additives, and none about reaction products and impurities. Hence, the safety of these migrates was not shown. Five German consumer associations found⁴³ a similar pattern of incomplete

³⁷ Verbraucherzentrale. [“HEISSE” KÜCHENUTENSILIEN? Bundesweiter Marktcheck der Verbraucherzentralen zur Kennzeichnung von Lebensmittelbedarfsgegenständen aus Kunststoff](#). July 2015.

³⁸ That is, the FCM Regulation.

³⁹ According to the Commission proposal (COM/2003/0644 final), the use of chemicals in FCMs – and cosmetics – are adequately addressed by other EU legislation; this is incorrect. For cosmetics, this ‘oversight’ was addressed by the 2009 Cosmetic Product Regulation (1223/2009) which strengthened the obligation for producers to perform a safety assessment prior to placing a product on the market.

⁴⁰ See e.g. J. Muncke et al. 2017. Scientific Challenges in the Risk Assessment of Food Contact Materials. *Environmental Health Perspectives* 125(9).

⁴¹ Joint Research Centre. *Non-harmonised food contact materials in the EU: regulatory and market situation. Baseline study*. January 2017.

⁴² G. McCombie et al. 2016. Compliance work for polyolefins in food contact: Results of an official control campaign. *Food Control* 59.

⁴³ Verbraucherzentrale. [Kunststoffverpackungen bei Lebensmitteln: Sicherheit und Transparenz](#). Bundesweite Herstellerbefragung eine Gemeinschaftsaktion der Verbraucherzentralen. December 2014.

documentation in eight declarations of conformity for plastic films. In no single statement were all mandatory entries completed, while a majority failed to provide information needed to ensure safety during subsequent production stages. This lack of information is unacceptable, and urgently needs to be addressed.

A reformed FCM regime must introduce obligations for business operators to perform a safety assessment of their food contact materials and articles, including of the chemical mixtures migrating from finished products. These requirements should be established as a joint supply chain obligation based on a duty to transfer safety-related information from one supplier to the next in the manufacturing chains. Such requirements would not only increase the available information in the supply chain but would likely also incentivise industry to reduce the significant number of substances and processes used to fewer, but better evaluated, ones.⁴⁴

Strict obligations for pre-market safety assessments of food contact materials would incentivise industry to reduce the enormous number of chemicals used to fewer, but better evaluated, ones.

Documentation should be included in product files available to the relevant companies in the supply chain as well as to authorities for a pre-defined duration, e.g. 10 years, to enable systematic spot checks. Specific quality criteria (e.g. accuracy, completeness and hence reliability) related to product files and compliance documents need to be established in legislation and linked to sanctions to ensure adequate quality and traceability of the information transferred along the supply-chain. Finally, mandatory registration of business operators and an obligation to notify the Commission and Member States prior to placing FCMs on the market should be introduced.

Ensure effective enforcement

Enforcement of EU FCM legislation remains inadequate, as recently highlighted by the European Court of Auditors.⁴⁵ While the new Official Controls Regulation⁴⁶ (OCR) is expected to bring some improvements, e.g. in relation to import controls, further efforts by Member States are needed to bridge the gap between legal requirements and the reality of consumer exposure to chemicals migrating from FCMs in to food. BEUC has recently documented⁴⁷ a disturbing decline in resources and in the overall number of official food controls carried out by Member States. That trend must be urgently reversed.

As foreseen by the OCR, Member States must entrust their authorities with sufficient powers, resources and knowledge to effectively enforce the FCM legislation. Given the significant number of largely unknown chemical substances originating from FCMs, Member States should prioritise official controls of food contact materials and products in line with the risk-based approach prescribed by the OCR.

⁴⁴ See K. Grob. 2017. The European system for the control of the safety of food-contact materials needs restructuring: a review and outlook for discussion. *Food Additives & Contaminants: Part A* 34(9).

⁴⁵ European Court of Auditors. *EU food safety policy protects us but faces challenges*. Special Report. January 2019.

⁴⁶ Regulation (EU) 2017/625.

⁴⁷ See BEUC. [Keeping food in check](#). October 2019.

Member States need to significantly increase the number of official controls of food contact materials on the market as well as target compliance issues in FCM supply chains.

A reformed FCM regime must further address known shortcomings, such as coordination problems between different national competent authorities and between competent authorities and control laboratories. Member States also need to tackle the insufficient number of official controls of food contact materials on the market and compliance issues in FCM supply chains.^{48, 49} New obligations for businesses operators to perform and notify safety assessments of their food contact materials would greatly facilitate official controls (see above).

Consumer organisations play an essential role in informing consumers about their rights and protecting their interests. To strengthen enforcement of the FCM Regulation, we therefore encourage national competent authorities to systematically cooperate with consumer organisations. Inspiration for such cooperation could come from the approach and principles set out in the revised CPC Regulation.⁵⁰

Given the limited resources available to authorities, official controls should be shared, coordinated and streamlined throughout Europe, including through EU-agreed functional procedures (e.g. on how to perform controls or how to access documentation). This could also help avoid that the same product is controlled repeatedly, whereas others are not controlled at all. The European Union Reference Laboratory could support this development.⁵¹

BEUC finally urges the Commission to take a much more prominent role on enforcement of EU FCM legislation. In particular, the Commission should encourage Member States to develop a systematic enforcement strategy to ensure that EU FCM policy translates into real consumer protection. Inspiration could for example come from the current REACH enforcement indicators⁵² as a tool to enable benchmarking of national enforcement activities. As foreseen by the OCR,⁵³ the Commission may also set rules on uniform practical arrangements for the performance of official controls, including minimum frequency of official controls. We strongly encourage the Commission to actively explore how such rules could be implemented in practice.

In parallel, the Commission should convene a special working group for FCM control authorities similar to the Platform of European Market Surveillance Authorities in Cosmetics. Such a group would enable knowledge exchange on the practical aspects of FCM official controls, ultimately with a view to promote a consistent approach to the presence of dangerous chemicals in FCMs.

⁴⁸ Joint Research Centre. *Non-harmonised food contact materials in the EU: regulatory and market situation. Baseline study*. January 2017.

⁴⁹ G. McCombie *et al.* 2016. Compliance work for polyolefins in food contact: Results of an official control campaign. *Food Control* 59.

⁵⁰ Regulation (EU) 2017/2394.

⁵¹ See J. Daniel *et al.* 2019. Conclusions from a Swiss official control of the safety assessment for food contact polyolefins through the compliance documentation of the producers. *Food Additives & Contaminants: Part A* 36(1).

⁵² The enforcement indicators are used to monitor and measure the performance of the enforcement of the REACH and CLP regulations. See e.g. European Commission. [REACH and CLP enforcement - Summary of available information from Member States and through public consultation on enforcement](#). September 2018.

⁵³ Cf. Article 19 of Regulation (EU) 2017/2394.

Improve transparency for consumers

The public's right to know is a core principle of EU chemicals policy.⁵⁴ Still, information on substances of concern migrating from FCMs remains woefully incomplete. For example, five in six manufacturers surveyed⁵⁵ by German consumer associations provided no information on the composition of their plastic materials, while the remaining manufacturers gave only general information and no information on additives. This situation *de facto* curtails the right to know for consumers, while also hampering risk management of chemicals of concern.

A reformed EU FCM regime needs to improve transparency on chemicals present in and migrating from food contact materials. Clear and readily accessible information about substances of concern is essential to facilitate identification, traceability, and handling of exposure sources. Consequently, new EU rules should require FCM manufacturers and suppliers to declare the chemical contents of *all* materials and products sold to consumers.

Consumer education about chemicals used in food packaging must complement regulation, not replace it.

Improved transparency could influence what retailers choose to buy, and hence what materials and products would become available for consumers, including pregnant women and parents with small children. Consumer organisations and other NGOs could further contribute to disseminating information about chemicals in food packaging in a way that is understandable to consumers. Finally, public access to this information would greatly facilitate efforts to identify chemicals of emerging concern through scientific research.

Greater transparency about chemicals present in and migrating from food contact materials and products would thus facilitate informed consumer choices. Above all, however, we emphasise that improved transparency under no circumstance should shift responsibility to the consumer for avoiding exposure. Only regulatory measures as set out above are an acceptable solution to protect consumer health and safety.

Make recycled FCMs as safe as virgin ones

As the transition to a more circular EU economy gains momentum, fixing the governance of chemicals in FCMs assumes new urgency. Recycling of packaging wastes into new food contact materials presents particular challenges. The use of recycled materials for food packaging may increase both the possible sources of contamination and the amount of chemicals that can migrate from packaging into foods. The presence of non-intentionally added substances can often reach higher levels in recycled food packaging, since recirculated materials may contain contaminants, such as dyes or additives, while previous use of the packaging or sourcing of materials not intended for food contact may contribute to the presence of unwanted and/or unexpected contaminants.⁵⁶

Last year, a report for example documented⁵⁷ the presence of a banned, suspected endocrine disruptor (octaBDE) in 86 per cent of tested consumer products, including kitchen utensils made of recycled plastics. Our Danish member, Forbrugerrådet TÆNK, has

⁵⁴ See [Council Conclusions on the protection of human health and the environment through the sound management of chemicals](#). December 2016.

⁵⁵ Verbraucherzentrale. [Kunststoffverpackungen bei Lebensmitteln: Sicherheit und Transparenz](#). Bundesweite Herstellerbefragung eine Gemeinschaftsaktion der Verbraucherzentralen. December 2014.

⁵⁶ See B. Geueke *et al.* 2018. Food packaging in the circular economy: Overview of chemical safety aspects for commonly used materials. *Journal of Cleaner Production* 193.

⁵⁷ J. Straková *et al.* [Toxic Loophole. Recycling Hazardous Waste into New Products](#). October 2018.

likewise documented⁵⁸ the presence of chemical contaminants, such as mineral oils, bisphenol A, phthalates, and nonylphenol, in pizza boxes, likely originating from recycled materials.

The Commission's Plastics Strategy and the recent decision to ban certain single use plastics – such as plastic cutlery, plates and straws – are set to further exacerbate these concerns as business operators switch to alternatives for which adequate EU rules are not in place, such as paper and board or bamboo.

German consumer organisation Stiftung Warentest for example recently found⁵⁹ that bamboo-based, re-useable cups release high amounts of melamine and formaldehyde, two substances suspected to cause cancer. Many manufacturers were moreover found to mislead consumers with claims advertising the recyclability and biodegradability of cups that neither degrade in the environment nor within industrial composting facilities.

A circular economy can only be successful if consumers are confident that recycled materials are safe. In practice, it means certain products and materials should not – and cannot – be recycled.

Last year, Öko-Test likewise documented⁶⁰ that single-use tableware made of plastic alternatives, such as palm tree leaves, can contain traces of the banned pesticide DDT along with biological contaminants – such as mould and mite excrements. While we support the initiatives announced as part of the European Green Deal,⁶¹ notably the commitment to ensure that all packaging on the EU market is reusable or recyclable by 2030 as well as the plan to further reduce the amount of single use plastics,⁶² developing in parallel new, stringent EU rules for materials other than plastics is crucial to prevent consumer exposure to harmful chemicals migrating from new plastic alternatives.

The circular economy will only succeed if consumers are confident that secondary raw materials are safe. A scandal, such as a toxic substance recycled into food packaging, could both create unacceptable health risks and do tremendous damage to consumer confidence in the safety of recirculated materials. From a consumer perspective, it is therefore paramount that an ambitious framework is established that prevents chemicals of concern from being reinjected into the economy. This means accepting that certain products and materials should not – and cannot – be recycled.⁶³ It also requires new, stringent controls on 'recirculated' materials to prevent food packaging from contaminating our food.

Before closing the loop on a circular economy, the EU needs to close the regulatory gaps that could afford chemicals of concern a second lease of life in packaging and ultimately in food. Whether made from recovered or virgin materials, the EU needs to ensure the same level of protection for human health. More lenient standards for recycled materials to encourage their use will in contrast counteract the transition to a successful circular economy: while risks may be managed in virgin materials during first use, when it comes

⁵⁸ Forbrugerrådet TÆNK Kemi. [Unwanted chemicals found in pizza boxes](#). October 2015.

⁵⁹ Stiftung Warentest, [Bambusbecher im Test: Die meisten setzen hohe Mengen an Schadstoffen frei](#). July 2019.

⁶⁰ Öko-Test, [20 Einweggeschirr aus nachwachsenden Rohstoffen im Test](#). June 2018.

⁶¹ European Commission. *The European Green Deal*. COM(2019) 640 final. December 2019.

⁶² See BEUC. [How to bring down the use of single-use plastics?](#) October 2018.

⁶³ See BEUC. [How to detoxify the Circular Economy](#). July 2017.

to end-of-life and reincorporation into future goods, risks become increasingly unpredictable as there is little effective control of where recycled materials end up. Above all, EU decision makers need to pursue a clean circular economy through policies that respect the fundamental commitments of EU food and chemicals policies.

ENDS



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