

13.12.2012

French law to restrict the use of Bisphenol A (BPA) in food packaging has no safety benefit for consumers, disregards European law and risk assessment, and severely distorts the internal and international market

Today, the French Senate adopted a law imposing a use restriction for products intended to come into direct contact with foodstuffs containing BPA. **The members of the PC/BPA and ERC groups express severe disappointment and concern upon this decision; it fails to respect EU and global authority risk assessments that repeatedly confirmed the safety of use for BPA in food contact materials, including products for newborns and small children. A new full reassessment of BPA by the European Food Safety Authority (EFSA) is expected in May 2013. No unilateral national measures should be taken before EFSA releases its opinion on the safety of the substance. Industry is deeply disappointed to see the French government not respecting the existing EU rules for food safety, and will be considering all options as reaction to this decision.**

The French decision may result in a reduction, and not an enhancement, of French consumer safety, and will create a significant distortion of the internal and international market for food contact goods in the EU.

Too many open questions

The law has been adopted without addressing practical questions for its actual implementation in France or for global trade. No sufficient consideration has been given to the evidence of safety of alternative materials, the management of products currently in the shelves, the practicability and legality of health warning labels on products that are legally marketed, the drafting of measuring and compliance guidelines, the control of imported goods containing BPA which will be legal in the EU and beyond the EU, but illegal in France, potential impact on processing and transporting food etc.

France is now to notify the planned law to the World Trade Organisation (WTO) Agreement on Sanitary or Phytosanitary Measures (SPS). This process allows other countries to assess and respond to the intended ban within a period of 60 days. During that time, the law is not allowed to be promulgated in France. Industry is of the opinion that the law is likely to be incompatible with WTO SPS rules which are based on scientific principles.

Once the law is promulgated, food packaging for children up to the age of three will be banned from the first day of the month following the promulgation, whilst all BPA-based food contact applications will be restricted from January 2015.

Industry urges all stakeholders to notify the European Commission and the WTO of their views and potentially harmful implications of the French law. The “reversing” of the roles between EU and Member States regarding decisions on food safety sets a dangerous precedent whereby established EU risk management processes are ignored, the integrity and credibility of EFSA and other EU risk assessment bodies are undermined and the functioning of the internal and international market is severely threatened.

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Further information

Open questions regarding the practical implementation of the French law:

- **Timing and applicability:**
By 1.7.2014, the government has to present to the French National Assembly a report assessing the safety/potential toxicity of alternative materials used to replace BPA. Six months later (1.1.2015) all BPA-based direct food contact materials will no longer be allowed in France.
 - What will be the data base for this report?
 - Will the report assess alternatives on a general level, like the previous ANSES report on alternative substances?
-> Replacement of materials will have to take place on a food-by-food and product-by-product basis and there will not be a "one-for-all" solution, as is the current situation with BPA-based materials.
 - Will a report raising doubts on the safety of alternative materials delay the date of the law to be enforced?
-> It will not be feasible to replace a material in food processing with another one within less than 6 months.
 - What will be the criteria upon which to decide about safety for alternative materials?
-> The currently valid criteria have been ignored for BPA.

- Each food contact product is to have a label warning of its use by pregnant and breastfeeding women and for children under the age of three years
 - There is as yet no decree that defines the application of this rule to legally marketed products
 - Would this also apply to products already in the shelves?
 - How will practical implementation be managed and controlled?

- **Enforcement and control:**
 - What will be measured: food, direct food contact material, whole packaging?
 - What will be the limit level and the analytical method used?
 - Who will control?
 - How will imported products be controlled?

Safety of alternative materials must be proven

The members of the PC/BPA and epoxy resin groups welcome the National Assembly decision to request the government to submit a report evaluating possible alternatives to BPA with respect to their potential toxicity before 1 July 2014. In fact, certain claims regarding the availability of appropriate alternative materials for use in all food contact applications are non-substantiated. For the vast majority of products there are currently no adequate alternative substances or materials available, which are sufficiently tested, shelf-life-proven, and matching BPA's performance characteristics. However, in this context it appears astonishing that France invites the use of potential alternatives for products for small children as soon as possible, while in the same law it requests a report on the potential toxicity of alternatives only by July 2014 – this would mean a specially vulnerable part of the population could be exposed to products with an unknown toxicity profile during that period. A science-based assessment of alternative materials will be crucial to consumer safety in France.

Labelling discredits legally approved products

The request to label food packaging containing BPA with a health warning against its use by pregnant women, breastfeeding women and children below three is a paradox in itself. Products on the European market are tested and approved for their uses; if compliant with existing legislation, the sole effect of such a label will therefore be to discredit and question the suitability of a product that is safe for use and fulfills all legal and regulatory requirements. This decision

- substantially increases consumer concern about what they can rely on
- adds little to consumer choice
- will not contribute to increased safety of consumers
- will cause incalculable added costs and complexity for business operators, the practical consequences for the French market will have to be observed.

BPA has repeatedly been assessed and confirmed safe for its intended uses:

- ❖ BPA-based materials in food contact comply with strict EU safety rules. There is no evidence that the exposure of consumers or workers to products made from materials based on BPA could cause a safety risk to human health. There is no scientific reason to replace a well-tested, authority-assessed and confirmed as safe product.
- ❖ EFSA assessed BPA safety in food contact materials in 2006, 2007, 2008, 2010, and 2011 – on each occasion it was concluded that BPA can be safely used in its current food contact applications, including products for newborns and small children.
- ❖ After review of the 2011 French Food Safety Agency (ANSES) report on BPA, EFSA and the European Commission concluded there was no need for any risk reduction measures further to those already in place.
- ❖ In September 2012, Health Canada released its updated “Assessment of BPA Exposure from Food Sources” and once again confirmed that BPA is safe for use in food contact materials. The experts conclude: *‘that current dietary exposure to BPA through food packaging uses is not expected to pose a health risk to the general population, including newborns and young children.’*