PlasticsEurope
Association of Plastics Manufacturers

Polycarbonate/Bisphenol A group
Epoxy Resin Committee

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French ban on the use of Bisphenol A (BPA) in food contact: In conflict with European law and risk assessment - severe distortion of the market - no safety benefit for consumers

On January 1, 2015, the French ban on the use of Bisphenol A (BPA) for products intended to come into direct contact with food came into force in France. The enforcement comes despite many objections expressed over the past years from other EU Member States and global trading partners. The members of the PC/BPA and ERC groups of PlasticsEurope express severe disappointment and concern with regard to the French initiative. It does not respect existing EU law and expert opinion.

Ban scientifically unjustified – safety re-confirmed for BPA-based food contact materials

Many government bodies around the world including the European Food Safety Agency (EFSA) have repeatedly evaluated the scientific evidence on BPA over the last decade and have clearly stated that BPA is safe as used in food contact materials.

Only in 2014, the US Food and Drug Administration (FDA) and Health Canada again confirmed the safety of BPA, based on comprehensive risk assessments of the scientific evidence. Also the two most recent draft EFSA risk assessments, of July 2013 and January 2014, came to the same conclusion. EFSA adopted its final opinion on BPA in December 2014, publication is expected by the end of January 2015. The EFSA opinion should be the basis for any regulatory decision in Europe about food safety. France should act according to these independent European expert assessments.

Distortion of the internal and international market – increased uncertainty for all partners - no safety benefit for consumers

The French ban not only creates a significant distortion of the internal and international market for food contact goods, but also sets a precedent for unjustified and fragmented regulatory standards. The public health and consumer safety justifications invoked by France to proceed with its national ban are scientifically unjustified and discredited by the fact that France favours French companies and discriminates non-French market partners.

The exemptions granted for industrial materials and equipment in food contact, for materials and objects containing non-intentionally added BPA, and for several individual applications demonstrate, that the French claim that BPA poses an immediate danger to human health is entirely inconsistent with the fact that France has chosen to limit the scope of the ban. The derogation from the European rules for the free movement of goods are not based on a seriously considered health policy.

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 therefore no scientific reason to replace a product that is well-tested, authority-assessed and confirmed as safe. Industry is considering all legal options as a reaction to the French ban.

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Background:

French report on the safety of alternatives to BPA presented to French Parliament 14.11.2014
http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026830015&categorieLien=id

- The conclusions of the French report on alternatives to BPA in food contact materials significantly underplay the challenges faced during trials, qualification and industrial scale-up of proposed alternatives. In fact, the report
    - does not critically validate the information provided by French industry
    - misrepresents the "industry position" regarding alternatives
    - lacks a robust scientific and toxicological assessment of proposed alternatives
    - fails to provide a conclusion that represents the content that precedes it
- The alternatives, substances or broad categories listed in the report cannot be automatically interpreted as safe and/or suitable only because they are mentioned in the report: It is *not* a positive list of "approved substances".
- The report should neither be interpreted nor misunderstood as confirmation that a switch to substances other than BPA would be immediately feasible and comparably easy. This is not the case.

Questions regarding the consistency and the practical implementation of the French law with respect to the "implementation guideline" issued 9.12.2014**:**
http://www.economie.gouv.fr/dgccrf/mise-en-oeuvre-loi-bisphenol-a-bpa

- How can companies make decisions on investment when the implementation guidelines for the law are provided only three weeks before enforcement, with key questions unanswered? Furthermore, the content of the guidelines is described as "pending a superior court decision", creating further uncertainty.

- How can the same material and use be regarded as dangerous when used by consumers, but safe in industrial use? (e.g. consumer chocolate and pastry moulds as opposed to industrially used ones)?
- What will be the criteria upon which France regards other substances/materials as safe? France ignored the currently valid criteria for BPA – does France have a different set of safety criteria? On what scientific basis are decisions taken?
- Who will enforce the measure? How will imported products be controlled?

- BPA-based materials "used behind a barrier material preventing the migration of chemicals, such as varnish or printing ink applied to the outer part of a packaging container" are not banned. Does this also apply to multilayer coatings used on the inside of a container?
- Why is water from polycarbonate water containers banned, but French wine from large epoxy-coated wine storage tanks not?
- If BPA was dangerous, how can BPA continue to be acceptable to any amount in paper and carton consumer food packaging?

Pragmatic derogations and exemptions are understandable only from a national economic perspective. However, if the French justification for the law as a safeguard measure to prevent danger to the French population was based on substantial scientific evidence, the ban would be expected to be applied consistently.