



POSITION PAPER

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Industry calls for immediate Commission response on Bisphenol A following EFSA safety confirmation

On 21 January 2015, the European Food Safety Authority (EFSA) published its opinion on the safety of Bisphenol A (BPA), a chemical building block widely used in the manufacture of packaging materials for food contact. EFSA's experts concluded that BPA poses no health risk to consumers of any age group (including unborn children, infants and adolescents) at current exposure levels. Prior to the publication of this opinion, several EU Member States had adopted national measures restricting the use of BPA in food contact materials. This means that e.g. certain foods will need to be packed in different materials than for the rest of the EU market when destined for an affected national market. While these national measures are in conflict with existing EU law and go against the EU's core principle of the free movement of goods, the European Commission decided to await the comprehensive new EFSA opinion before taking any actions against these national measures.

Despite the clear scientific opinion of EFSA now being available, there is a worrying lack of respective action on the part of the authorities

Four months after the publication of the EFSA safety conclusion, national restriction measures on BPA are still in place and there is no information from the European Commission on the next steps it intends to take. This gives a worrying signal both to European consumers and businesses. We, the undersigned industry associations, urgently call on the European Commission to address the BPA case as a matter of priority in order to remove the uncertainty for consumers and businesses.

BPA-based food contact materials continue to be banned in France despite EFSA's clear safety conclusion

In France, a unilateral measure has been introduced which restricts the use of BPA in all food contact materials in France since 1 January 2015². This ban has been pursued by France on the grounds of protecting consumers, despite the fact that many government bodies around the world, including EFSA, have repeatedly evaluated the scientific evidence on BPA and confirmed it as safe for use. Furthermore, the French law was enforced despite many formal objections expressed over the past years from other EU Member States and global trading partners, objections which have to-date been ignored by the French authorities.

² As of January 1, 2015, the French Law No. 2012-1442 of 24 December 2012 bans the manufacturing, import, export and placing on the market of any bisphenol-A based material intended for use in food contact packaging, containers and utensils for all food contact applications.
<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000026830015&categorieLien=id>



The French measure runs contrary to the Commission's own core priorities

European plastics food-contact packaging legislation is harmonised in a single market with common rules. This is now being de-harmonised which is counter productive and indeed the opposite of “better regulation“. Our organisations have continuously expressed strong concerns about the precedent that the French measure sets. **It ignores existing harmonised EU food-contact law; it provides no additional safety benefit for consumers, but it severely damages the impacted industries in Europe³:**

- The ban in France severely **weakens and distorts the European Single Market** for these packaging and food container products. At a time when a deepening of the Internal Market is a core priority, manufacturers of everyday goods - from drink cans to plastic water coolers - now face differing standards for marketing and producing their products in France compared to the rest of the EU.
- The measure creates a significant level of **investment uncertainty** for all business sectors that rely on harmonised European standards as a basis for their European operations. For the single market for these goods to work properly, investors need the certainty that Europe-wide standards and regulations will be honoured. How can industry invest without the legal certainty which the Single Market is meant to provide?
- The measure is already having an unnecessary and **detrimental effect on growth** for the affected industries. The packaging and food container market is a Europe-wide one and industry solutions are typically developed for the market as a whole rather than for specific national markets – negative economic impacts are therefore being felt inside as well as outside France.

Assessments about socio-economic impact of further restriction of BPA are irrelevant in the case of a confirmed safe substance

The EFSA assessment gives a very clear “green light” for the use of BPA in food contact materials. No additional considerations are warranted. The substance is safe, it can be used. If a substance is not safe, it must be restricted. In both cases, socio-economic assessments are irrelevant. We support the adoption of science-based regulatory decisions: We do not support national derogations or protecting national markets.

Lack of decisive action is leading to further regulatory spill-over into other safe applications and encourages “à la carte” initiatives

Whilst the period of legal limbo continues Member States feel increasingly encouraged to abandon the Single Market approach to BPA-based products. For example, moves are being

³ In March 2013, the PC/BPA-group of PlasticsEurope had filed a complaint against the French law at the European Commission. It is being handled under EU PILOT 5815/13/ENTR. http://www.bisphenol-a-europe.org/uploads/Modules/Mediaroom/industry_complaint_2013.pdf Industry considers that the French law n° 2012-1442 of December 2012 infringes numerous EU provisions, including the principle of the free movement of goods, Regulation 1935/2004 on food contact materials and Commission Regulation 10/2011 on plastics materials and articles intended to come in contact with food, Commission regulation 1895/2005 on epoxy derivatives in food contact materials, the precautionary principle, the Technical Standards Directive 98/34, and WTO law. The complaint requests that the Commission takes the necessary steps to stop these infringements.



made in the French National Assembly to extend an unjustified and disproportionate restriction to BPA in toys, which would be another clear infringement of existing EU law. In Denmark, additional “voluntary” restriction options are being requested. In Sweden, market partners announce to stop using BPA-based food packaging requesting “alternative” substances from their suppliers. If industry can no longer use products assessed as being safe by EFSA, we need to understand which criteria need to be applied to develop acceptable substitutes. Otherwise, “à la carte” deselection processes will imply time, money and liability issues. This precedent also opens the door widely for Member States to proceed with further unilateral restriction intentions on other chemicals applications, far beyond BPA.

We call upon the European Commission to address the BPA case according to the existing laws and regulations as a matter of priority

The longer the European Commission fails to act against existing measures that are in conflict with existing EU law or regulatory agreements, the more the credibility of the European regulatory approach is undermined and the more the Single Market will become fragmented. In the interest of European citizens and businesses, and in line with the European Commission’s agenda for Better Regulation, we call for a swift response by EU policymakers, demonstrating the importance of EU harmonized legislation and limiting the ongoing damage to the Single Market caused by national measures.