



Feedback on the draft regulation concerning the placing on the market of plastic materials and articles with recycled/secondary plastic content intended for use in contact with food

Policy briefing

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We thank the European Commission for the opportunity to provide comments on this draft Regulation concerning the placing on the market of plastic materials and articles with recycled/secondary plastic content intended for use in contact with food.

Most plastic food contact materials (FCMs) on the market today (with or without recycled content) can contain several known hazardous chemicals which are authorized by the EU, as well as many chemicals that are unknown, and EU citizens are exposed to these chemicals when they migrate from FCMs into food. Evidence shows that recycled plastics frequently contain higher levels of hazardous chemicals compared to virgin plastics (www.foodpackagingforum.org/news/study-characterizes-chemicals-present-within-recycled-products).

The most efficient way to improve the chemical safety of recycled food packaging is to eliminate or substitute hazardous substances in all materials and articles that enter the recycling stream.

The main focus of this new draft regulation on recycled plastic/secondary plastic for FCM is on decontamination effectiveness and efficiency of the recycling processes. However, in order for such effectiveness and efficiency to be well assessed, and most importantly to ensure that no harmful chemicals are present in FCM, not only the technology should be thoroughly characterized, but also the materials used, their properties, contaminants and their sources. Neither the (currently under review) EU legal framework for food contact materials nor the current draft regulation, satisfactorily ensure that all of these conditions are met.

While the EU has clearly promised to eliminate in the near future hazardous chemicals legally used in plastic packaging today, this draft new regulation supports rather a maintenance of the *status quo*. It brings a risk that technologies, being developed before the anticipated changes in the FCM Framework Regulation are introduced, will not be delivering decontamination expected according to the revised regulation.

Moreover, is it not clear how coherent provisions of this draft new regulation will be with a revised in the near future waste legislation. In particular, P&PWD still has to provide a definition of 'recyclable packaging', essential criteria for 'recyclability' and 'recycled content', which seem to be relevant also for recycled plastic for/in food packaging.

The most worrying feature of this draft new regulation is that recycled plastic materials and articles produced using novel technologies would be allowed to be placed on the EU market, prior to any assessment of their efficiency and safety.

While the arguments presented can be appreciated to collect data and reduce uncertainty in order to draw conclusions on the performance of these individual recycling processes, they still do not justify the potential risk that the scaled-up use of technologies (not yet proven to be suitable) may pose to public health.

It is not clear how placing on the market of plastic materials and articles with recycled/secondary plastic content intended for use in contact with food will be controlled when a recycler/developer is located outside the EU (who and which authority should notify?).

In addition, the draft new regulation does not provide enough specifications regarding "a large and representative number of samples" to be gathered by developers (recital 15; when such number is large enough to minimise the uncertainty as to the characterisation of the plastic input and of recycled plastic materials and articles?); neither are rules regarding the initiation of the safety and suitability assessment clear enough. A recommended "level of flexibility" (recital 17) regarding the start and the scope of the assessment of a novel technology can rather delay such an initiation, not accelerate it. The suggested time for the assessment/authorisation of a new technology (up to a maximum of 7 years) should be shortened.

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Finally, it is not clear what the “evidence or indications showing that recycled plastic materials and articles recycled with a suitable recycling technology or with a novel technology may endanger the health of consumers” (recital 18) could exactly be, and how it will be collected and monitored during enforcement of this regulation.

The positive aspect of this draft regulation is an improvement when it comes to the traceability and a quality assurance system of the waste sector.

We strongly recommend improving/providing more information on certain parts of this draft regulation, for the sake of a better monitoring and enforcement in the future:

- Article 10.3(c): Who will be evaluating this part of the notification (reasoning and scientific evidence compiled by the developer, including a characterisation of expected contaminant levels in the plastic input and in the recycled plastic, and the expected transfer of these contaminants from the recycled plastic materials and articles to the food)? Will a positive evaluation be a condition for registration?
- Article 12.3(c): Residual incidental contamination in the output should be measured and not estimated – this is the only way to confirm that a novel technology is efficiently removing contaminants present in the plastic input (and is therefore safe).
- Article 12.3(e): It should be specified how the migration testing must be performed.
- Article 13.1: A precise extent and scope of tests to be done at each input and output batch should be specified.
- Article 13.4(f): “A measurement” and not “estimation” of the migration levels to food of contaminants present in the recycled plastic materials and articles should be required.
- Article 14.1: It should be explained in more detail when data available on a novel technology is considered “sufficient”.
- Article 14.2: A reason for a possible delay (“when other operators are developing the same or similar novel technologies”) is not entirely clear. The same technology being developed (even if by different operators) should result in a faster, rather than slower, start of evaluation (because we could expect more data and the number of samples produced simultaneously as well).
- Article 15.1: Please provide clear timelines for the European Commission for making those decisions (similar to what has been done for the Authority).
- Article 19: A clear time limit for the European Commission to make a decision granting the authorisation for the individual recycling process should be specified.
- Article 24: Please specify who will develop and maintain a public Union register? What are the timelines for the creation and making it available both for the industry and the general public?

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Zero Waste Europe is the European network of communities, local leaders, experts, and change agents working towards the elimination of waste in our society. We advocate for sustainable systems and the redesign of our relationship with resources, to accelerate a just transition towards zero waste for the benefit of people and the planet.



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