CHEMTrust
Protecting humans and wildlife from harmful chemicals

Consultation Response

January 2021

CHEM Trust's response to the European Commission's Inception Impact Assessment (IIA) on Revision of the EU rules on Food Contact Materials (FCM)

CHEM Trust welcomes the IIA as a significant step towards achieving toxic-free FCM. FCM are a major source of consumer and environmental exposure to hazardous chemicals, and current laws are not fit for purpose. These problems are now accentuated by innovation to non-plastic materials, potential increases in food packaging volumes as a result of the COVID-19 pandemic and an increase in recycling and reuse. Urgent action is required to create safer FCMs and to deliver the Green Deal.

In CHEM Trust's analysis the EU must create a new harmonised regulatory framework for FCM. Any attempt to use the current framework would lead to a confused, ineffective system and so we support IIA option 2.

1. Ban the most harmful chemicals, use grouping and start now

As a matter of priority, the new FCM policy must fully embrace an extended generic approach to risk management as set out in the CSS. The current migration-based risk management can no longer be a valid approach for the most hazardous chemicals, such as EDCs, CMRs, PBTs, vPvBs, and chemicals that affect the immune or neurological system. Such groups of substances must be identified swiftly and effectively, working closely with other chemicals regulations such as REACH, and be rapidly banned from being used in FCM.

A new FCM regulation might only enter into force after the end of this Commission's term, which means continuing consumer exposure to the most hazardous chemicals. However, the current legal framework is flexible enough to apply the generic approach in many cases, as done for microplastics & PFAS. We encourage DG SANTE to cooperate with other DGs to rapidly prioritise hazardous substances for group restriction under REACH, including all FCM uses.

2. Step up efforts to tackle NIAS, ensuring effective regulatory oversight

We support a focus on the final article primarily as means to manage NIAS. We note that the generic risk management approach also applies to the NIAS, as clarified at the Commissions recent stakeholder workshop, and we encourage the Commission to consider if there is a need for funding of scientific research to better identify these substances.

Industry must be responsible for providing adequate information about both IAS and NIAS to ensure safety, however there must be effective regulatory oversight. We are concerned at the IIA's suggestion to devolve a substantial element of defining safety and the monitoring of overall compliance to private bodies, rather than to public authorities. This approach has been found to be ineffective in other areas, is prone to conflicts of interests, lacks transparency, and is open to manipulation. The US system provides specific examples of these problems[1].

An effective and protective system will require the Commission, EFSA and MS to work together to ensure compliance.

3. Establishing a positive list of substances instead

We are disappointed that DG SANTE implies that it has dismissed the idea of establishing a positive list of substances for use in FCMs. A positive list is now being created for chemicals in contact with drinking water, using an approach which promises to be more rapid, effective, and workable than the current Union List for plastics. Such an approach would be a more accountable and transparent approach for all FCM substances, including tier 2 and particularly the tier 3 substances compared to delegating this task to industry. All assessments of substances should consider mixture effects and must be updated as new science emerges.

Using experience from the system for information flow up and down supply chains in the REACH Regulation, we encourage the Commission to consider if positive synergies could be created between the following elements:

1) A requirement for information on IAS and NIAS from all relevant actors in the supply chain

2) A publicly accessible database containing this information, and

3) Positive listing of both starting substances and final materials.

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[1] Environmental Defence Fund, September 2020, FDA's Failure on Food Chemical Safety Leaves Consumers at Risk of Chronic Diseases: http://blogs.edf.org/health/2020/09/23/fdas-failure-food-chemical-safety-chronic-diseases/

US Government Accountability Office, GAO 10-246 Food Safety, 2010, FDA Should Strengthen Its Oversight of Food Ingredients Generally Recognized as Safe (GRAS): https://www.gao.gov/products/GAO-10-246

Neltner et al., Jama Internal Medicine, December 9/23, Volume 173 Number 22, 2013, Conflict of Interest in approvals of Additives to Food Determined to be Generally Recognized as Safe. out of balance: https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/1725123