



CHEMTrust

Protecting humans and wildlife
from harmful chemicals

**Consultation
response
January 2023**

CHEM Trust’s additional comments on the European Commission’s consultation on the revision of EU rules on food contact materials

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1 Introduction

CHEM Trust welcomes this opportunity¹ to input into the Commission's discussions on the revision of the EU's Food Contact Materials (FCM) legislation. CHEM Trust is an NGO that focusses on EU-level regulation of chemicals, in particular endocrine disruptors and persistent, bioaccumulative and/or mobile chemicals, including in FCMs.

CHEM Trust has also filled in the Commission's multiple-choice questionnaire as part of this consultation; this is available from the Commission site:

- https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12497-Revision-of-EU-rules-on-food-contact-materials/public-consultation_en

2 General comments

2.1 Ensuring food safety is of highest priority

The EU's Chemicals Strategy for Sustainability (CSS) in 2020 recognised that exposure to harmful chemicals is “*a threat to human health*” and that chemical pollution is “*one of the key drivers putting the Earth at risk, impacting and amplifying planetary crises such as climate change, degradation of ecosystems and loss of biodiversity*”. Hence, addressing chemicals is of high priority and strict measures are necessary to protect human health and the environment.

With regard to the legislation on food contact materials the Chemicals Strategy specifies that

- a) the **generic risk management approach** under REACH should be **extended**, amongst others, **to food contact materials** and the
- b) measures will be introduced and reinforced, amongst others, in the legislation on **food contact materials, to take account of combination effects from chemical mixtures** (from several exposure sources)

We think it is a high priority for the Commission to **ensure that these two issues are incorporated into the revised FCM legislation** in a way that they would enter into force also, if the REACH revision is (further) delayed. This means that

- a) a generic risk assessment approach (GRA) is implemented for the most hazardous substances, including those that, meet the SVHC criteria or are classified as CMR (Cat 1 and 2), EDC (Cat 1 and 2), PBT/vPvB, PMT/vPvM, or respiratory sensitizer, or which have immunotoxic or neurotoxic properties. These substances must not be allowed in FCM. Proof of compliance must require information on the absence of these substances in the materials themselves rather than migration testing.
- b) risk assessment provisions, which would apply to substances of lesser concern than (a), include a requirement to assess mixture risks, preferably by applying a Mixture Assessment Factor(MAF). For further information, please refer to the [CHEM Trust report](#) on chemical mixtures and our proposal for the size of the MAF of 100 to cover the combined exposure to multiple chemicals from multiple sources.

Implementing a GRA approach for FCMs under REACH or independent of REACH will drive innovation for either safer chemicals to be used in FCMs or a change in the materials used to package food. CHEM Trust is certain that sufficient safer alternatives are or will be available in the area of food packaging, including a switch to completely new packaging solutions.

¹ https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12497-Revision-of-EU-rules-on-food-contact-materials/public-consultation_en

2.2 Sustainability is important, but not an issue for FCM legislation

The revision of the food contact materials (FCM) legislation is announced for Q4/2022 in the farm to fork strategy under the EU's green deal. It specifies: *“The Commission will revise the food contact materials legislation to improve food safety and public health (in particular in reducing the use of hazardous chemicals), support the use of innovative and sustainable packaging solutions using environmentally-friendly, re-usable and recyclable materials, and contribute to food waste reduction.”*²

While CHEM Trust acknowledges the need to improve the environmental performance of food contact materials and to reduce the environmental footprint of the sector, we consider the **core aim of FCM legislation to ensure food safety, i.e. eliminate the use of the most hazardous chemicals in FCMs and minimise migration of chemicals with less hazardous properties**. This includes PBT/vPvB and PMT/vPvM substances because during production, use and waste treatment of FCMs they can eventually reach the environment. Human exposure can subsequently take place via bioaccumulation and bioconcentration in the food web or via the drinking water.

Many of the consultation questions imply that the revised FCM legislation will contain additional information requirements about other sustainability issues than safety. In this regard, there are several reasons, why additional requirements on sustainability other than safety should be kept to a minimum under FCM legislation:

- The legislation is likely to become more complex and overloaded with different (types of) requirements, such as LCAs, environmental product declarations or carbon footprints as a minimum. This would
 - **Distract attention** from the chemical safety of FCMs and
 - **Require different people** to involve in FCM compliance in companies but also in the authorities;
- Other legislation is more appropriate to deal with the additional sustainability aspects of FCMs, including but not only:
 - The (planned) regulations under the Eco-Design Directive, where food contact materials should be a product group dealt with early in the work programme (high priority due to high exposure potential)
 - The digital product passport
 - The packaging and packaging waste directive, which already include resource efficiency considerations and waste legislation in general or
 - The EU-Ecolabelling scheme, which could set incentives on more sustainable products, too.
- Companies may use “other environmental soundness” as a reason to outweigh chemical concerns by “diluting” the problems regarding toxicity in the overall aspect of sustainability. Given the high importance of FCMs on the overall uptake of hazardous chemicals by humans and the large volumes of FCMs eventually releasing chemicals also into the environment, this is unacceptable.

Therefore, our replies to the consultation are cautious regarding the inclusion of wider environmental and even social aspects into the FCM legislation. We could imagine including references to requirements for information generation under other legislation into the FCM

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legislation and enable the communication of that information via Documents of Compliance or other communication tools under FCM.

We consider **safety as an integral part of sustainability**; therefore, we could not always find unambiguous answer to some of the questions which mention safety in addition to sustainability.

2.3 Legislation on FCMs should be harmonised for all types of materials

It was a clear finding from the evaluation of the JRC's evaluation of FCM legislation that the lack of harmonised legislation on most of the materials used in food contact is a major problem regarding the safety level of the general public but also for companies to understand requirements and authorities to enforce them.

Therefore, we want to highlight that harmonised legislation is needed for all of the materials included in the Annex I of the current FCM framework directive. In addition, a mechanism to add any new materials that may become relevant in the FCM sector to the FCM legislation should be foreseen in the legal text.

2.4 Addressing the final product to ensure NIAS are sufficiently covered

CHEM Trust welcomes the announced principle of shifting focus from starting materials to the final product under the FCM legislation. This is overdue to ensure that hazardous NIAS are not included in the FCM and/or migrate into the food. As this aspect is not explicitly mentioned in the consultation questions, CHEM Trust herewith underlines the need to keep this ambition in the revised legislation.

2.5 Considering persistent chemicals

Chemicals which are persistent, in particular PBTs/vPvBs and PMTs/vPvMs are a threat to current and future generations of people and wildlife. PFAS, which are highly persistent, have been found in FCMs in the past and, during production, service life and waste treatment of FCMs reach the environment and food chains/ drinking water, eventually.

Once released to the environment, removing persistent substance from the environment is extremely challenging, and impossible when it comes to the vast ocean. This means that humans and wildlife will continue to be exposed to these chemicals via environmental routes for decades, even if we were to stop emissions of persistent chemicals, in particular PFAS, today.

FCMs are in close contact with humans and packaging is produced in large volumes and partly with extremely short lifecycles. Therefore, FCMs are an important of exposure of humans and the environment to persistent chemicals. It is of utmost importance, that the use of PBT/vPvB and PMT/vPvM substances is restricted in FCMs as soon as possible. Such provisions may need alignment with the ongoing restriction process and/or any related provisions under REACH.

2.6 Increasing transparency

Transparency on the content of hazardous substances in FCMs is a core enabler of substitution. Only if the supply chain actors know what they are using can they make informed decisions and assess possible alternatives. Furthermore, the need to declare hazardous substances in products already has an effect, because 'negative labels' are generally avoided by the industries. Finally, transparency in the supply chain is an important pre-condition for providing information to the digital product passport or on labels for consumers to enable their informed decision making.

In line with several other timelines of the CSS and the European Green Deal, information on hazardous substances in FCMs should be available in the FCM supply chains and to consumers latest by 2030.

3 Specific comments

3.1 Q2: “To what extent do you agree that FCM legislation should address the following...”

We are not fully sure what is meant with “environmental concerns”. From our perspective it is highly important that PBT/vPvB and PMT/vPvM as well as endocrine disruptors for the environment are covered by FCM legislation. Due to the large volumes of FCMs and the partly very short lifetimes of FCMs, banning the use of persistent substances is an important contribution to reducing the toxic load of the environment (which will reach food chains eventually).

We see other environmental concerns, such as CO₂-emissions, resource use etc. as better dealt with under other legislation (c.f. above) but want to express that it is important that they are dealt with somewhere. FCM legislation should include a link to these additional requirements and may ensure that the communication tools in the supply chain support that relevant information can be included (but not generated) under FCM.

3.2 Q3: “On what basis should the following FCM substances be risk-managed”

Nanomaterials are not hazardous per se, therefore, we do not see this as a criterion for Priority 1. However, as nano-forms have a higher likelihood of being hazardous due to their higher surface/volume ratio and the existence of “nano-effects” they should be covered under FCM in a specific risk assessment approach.

3.3 Q4(a): “Regulatory intervention can be made at different stages...”

If shown to be necessary in a specific risk assessment, bans and restrictions on the content of substances of Priority 2 should also be possible.

3.4 Q4(b): “To what extent do you agree that the following tools are appropriate for the risk management of FCM substances”

We understand the list of options as a list of risk management instruments that should be possible to use in order to ensure safety of food contact materials. According to safety priorities, CHEM Trust considers the existence of instruments addressing the content of hazardous substances as most important. Instruments based on exposure considerations should be used only for substances of lower priority/hazard.

3.5 Q5: “To what extent do you agree with the following”

The prohibition of the most hazardous chemicals is certainly a very important step to reaching the sustainability goals. However, it is not sufficient as also less severe hazards of chemicals in FCMs must be addressed. In addition, chemical safety is only one in many areas that need improvement with a view to the SDGs. However, as indicated above, CHEM Trust is of the opinion that FCM legislation should support the implementation of other sustainability aspects, e.g. via communication, but not be the legislation that requires the generation of information, defines targets and/or implementation actions.

We note that safety is sometimes mentioned as part of sustainability and sometimes in addition. This is confusing and adds ambiguity to the questions.

3.6 Q6: “In your view, which aspects of sustainability of FCMs should be assessed?”

In CHEM Trust’s view, FCM legislation should focus on the safety of FCMS, i.e. one specific aspect of sustainability. Unfortunately, there is no option to provide this answer. In addition, PBT/vPvBs, PMTs/vPvMs and environmental endocrine disruptors in FCMs should be assessed (as an impact on the environment). However, wider environmental impacts, like climate change or biodiversity loss are better addressed under other legislation (cf. above)

3.7 Q8: “In your views, what are the main elements that support innovation of FCMs?”

The most important element supporting innovation and to achieve safe(er) FCMs is strict regulation of hazardous substances in FCMs. The European Chemicals Agency (ECHA) concludes in its study on the impacts of authorisation and restrictions under REACH³, that regulation is the main substitution driver. Therefore, bans and restrictions of substances of concern in FCMs are crucial. Due to the uncertainties related to the delay of the Commission’s REACH proposal, the generic risk management approach, i.e. the prohibition of substances of concern in FCM, should be included in the FCM legislation so it is in place regardless of whether the REACH revision process has been completed.

An additional element supporting innovation is transparency in the FCM supply chain. All actors must have access to information on the (remaining) content of hazardous substances in FCM to make informed choices on their input materials and hence influence the market demand. The current system is not sufficiently transparent and FCM producers (downstream) lack information on the identify of chemicals in their input materials (and hence their own products).

Legal provisions must be enforceable and actually enforced in order to create a level playing field and reward those actors that innovate and replace hazardous chemicals in the products with non-hazardous or at least less hazardous alternatives. This is supported by simple requirements: a ban can be enforced either by checking supply chain communication documents (though this does not necessarily catch NIAS) or by chemical analyses on the content of a substance in an FCM. Restrictions with conditions and the existence of several, non-harmonised national legislation are challenging for companies and for enforcement authorities. A strong innovation driver from the enforcement side is important, hence, requirements in the FCM legislation should be simple to enforce.

Finally empowering consumers to choose FCMs that do not contain chemicals of concern supports innovation by creating a positive market power. Consumers prefer FCMs that are free from hazardous chemicals. Hence, transparency on the content of chemicals of concern in FCMs, e.g. via labels, is crucial. Consumer choices and respective market power is another important element to incentivise innovation under the FCM legislation.

³ ECHA (2020): Impacts of REACH restriction and authorisation on substitution in the EU. Available at:

https://echa.europa.eu/documents/10162/24152346/impact_rest_auth_on_substitution_en.pdf/7c95222f-5f84-57f7-4cba-65b8463c79d4

4 Additional information

- *'Five key principles for future FCM legislation'* (2019)
 - <https://chemtrust.org/wp-content/uploads/KP-sign-on-document-word-sept-19.pdf>
- *'Chemical Cocktails – The neglected threat of toxic mixtures and how to fix it'*, 2022
 - <https://chemtrust.org/chemicalcocktails/>
- *'Throwaway Packaging, Forever Chemicals: European-wide survey of PFAS in disposable food packaging and tableware'*, 2021
 - https://chemtrust.org/pfas_eu_packaging/
- *'PFAS the 'Forever Chemicals': Invisible threats from persistent chemicals'*, 2019
 - https://chemtrust.org/wp-content/uploads/PFAS_Brief_CHEMTrust_2019.pdf