REFIT Platform Opinion on the submission by the Danish Business Forum on the so-called "declarations of compliance" concerning materials and articles intended to come into contact with food.

The REFIT Platform has considered the submission by the Danish Business Forum to use a pre-defined declaration on all types of materials and articles intended to come into contact with food and not just those subject to EU harmonised requirements.

The majority of the Stakeholder group considers that the recommendation by the Government Group should be taken forward.

The majority of Member States within the Government group recommend that the Commission issues a common European requirement for a declaration of compliance for all types of food contact materials, while one Member State does not support this recommendation as it will add to regulatory burden.

Detailed Opinion

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1 Submission XI.1a by the Danish Business Forum (DBF)

EU Regulation 1935/2004 allows Member States to adopt national provisions on so-called declarations of compliance concerning materials and articles intended to come into contact with food.

Some Member States, such as Denmark, require a declaration on all types of materials and articles intended to come into contact with food whereas other Member States, such as Germany, only require a declaration of compliance for certain types of material.

The Danish model ensures a very high level of food safety. However, it comes with a price for manufacturers and importers in Denmark that have to provide these declarations. Often suppliers from other Member States and third countries do not understand why Danish importers demand to see declarations of compliance when they are not met with the same demand from importers from other EU Member States.

Suggestion:

Common requirements in relation to declarations of compliance should be established. In order to secure a high level of food safety, it is suggested that the Danish model of declaration of compliance is supported by pre-defined declarations of compliance in the EU legislation on all the various types of materials and articles intended to come into contact with food. The pre-defined declarations should be possible to use in all situations, even if the materials are covered by more specific measures.

2 Policy context

The policy context is set by the EU legislation as follows:

- A declaration of compliance (DoC) is a written document issued by the producer, which confirms that a food contact material put on the market complies with the relevant legal requirements. The DoC shall be available at all marketing stages of the supply chain other than at the retail stage.

- Regulation (EU) No 1935/2004, the 'Framework Regulation' on food contact materials, sets out the basic provisions concerning DoC's in Article 16. Under this Article, a DoC is only required under specific EU measures which are enacted pursuant to Article 5 of the Framework Regulation and relating to the materials listed in Annex I of that Regulation. Currently EU specific measures exist for plastic, recycled plastic, ceramics, regenerated cellulose films, epoxy derivatives, active and intelligent materials. The Framework Regulation specifies that, for articles not subject to specific EU measures, Member States may require a DoC under national legislation. The Framework Regulation does not provide any further requirement in this context. Based on the information available to the Commission services, it seems that the national legislation of most, but not all, Member States requires DoCs and therefore specify at national level which information is to be provided.

Current state of play

The Commission services launched a study with the aim to provide a comprehensive description of the current situation concerning those food contact materials for which there
are currently no specific measures at EU level. This study will provide the Commission with a starting point for determining whether further action is necessary. The results are due in 2016.

3 Opinion of the REFIT Platform

3.1 Considerations of the REFIT Platform Stakeholder group

According to EU law, all food contact materials must conform to Article 3 of Regulation (EC)1935/2004, which states that:

“Materials and articles […] shall be manufactured in compliance with good manufacturing practice so that, under normal or foreseeable conditions of use, they do not transfer their constituents to food in quantities which could: (a) endanger human health; […]”

This article clearly states the public health objective of protecting human health from chemicals migrating from FCM into food.

This requirement currently applies to all FCM. However, only some FCM are currently obliged to supply DoCs. To fully achieve the public health objective stated above DoCs for all types of food contact materials should be required.

Recommendation:

The majority of the Stakeholder group considers that the suggestion by the Danish Business Forum (DBF) and the recommendation by the Government group should be taken forward under the condition that this would ensure a level playing field and give more legal security to the end user of the food contact materials, and would not actually trigger a burden of additional bureaucracy and lead to excessive demands especially for SMEs. To further ensure that policy objective of public health outlined in Article 3 of Regulation (EC)1935/2004 is achieved:

- It should be ensured that all chemicals which are in all food contact materials be taken into account: not merely the chemicals used in the materials for which there exist specific EU daughter legislation (under the Framework Regulation), and not just chemicals intentionally added, but also the unintentional contaminants.
- The process should also assess how to deal with the mixtures of chemicals from the entire food contact article.

3.2 Considerations of the REFIT Platform Government group

Recommendations to the Commission

A common European requirement for a declaration of compliances for all types of food contact materials will support the manufacturers and importers in their compliance work and prevent barriers to trade created by diverging national demands. However, it should be noted that not all Member States currently require a declaration of compliance for food contact
The Government group suggests establishing a requirement for a declaration of compliance for all types of food contact materials listed in annex I to Regulation 1935/2004. This would require a rewrite of Article 16 in Regulation 1935/2004, which currently only sets out a requirement for a declaration of compliance for those materials, which are covered by a European specific measure (i.e. plastic, recycled plastic, ceramics, regenerated cellulose films, epoxy derivatives, active and intelligent materials).

Additionally an annex should be added to Regulation 1935/2004, which specifies the required content of the declaration of compliance for food contact materials not covered by European specific measures. These requirements include confirmation that the food contact material complies with Regulation 1935/2004 as well as additional national specific measures issued by the country where the material is placed on the market. Other requirements should be agreed upon between the Member States, for example after discussions in the Commission working group for food contact materials.

The declaration of compliance is a document to be exchanged between trade partners at all marketing stages of the supply chain other than at the retail stage. Therefore, it cannot be substituted by a label - e.g. the glass and fork label - which is information intended for the final user of the food contact material, i.e. the consumer. There is broad support for the opinion [in the government group], but a few Member States are not in favour of the proposal.

One Member State considers that, in the absence of EU legislation regulating certain materials, the requirement of a document stating that it complies with European legislation is useless. On the other hand, it is not relevant to have an obligation for the signature of a document confirming that it meets the requirements of Regulation 1935/2004, since compliance is mandatory. As a result it would be a measure which introduces additional administrative burden, when the aim of this Platform is to reduce them, and does not provide benefits. This Member State considers it more correct to establish specific EU legislation regulating other materials. The European Commission, through the Joint Research Centre (JRC), is currently conducting a study to determine the need or not for this regulation.