

## Position

### Draft Commission Regulation banning the use of Bisphenol A and other bisphenols in food contact materials and articles

Following the publication of a draft Commission Regulation on the use of bisphenol A (BPA) and other bisphenols and their derivatives with harmonised classification for specific hazardous properties in certain materials and articles intended to come into contact with food on 9 February 2024, we would like to submit some general and article-related comments.

#### General Comments

Over the years, the aluminum packaging industry and its suppliers have been actively engaged in efforts and substitution processes to mitigate risks associated with BPA use in products with direct food contact. These endeavors have resulted in the replacement of BPA by alternative substances where feasible. We would like to underline that this has been a time-consuming and costly process, and although alternatives have been found for many applications, BPA coatings currently remain the only feasible option for some specific applications.

Additionally, we would like to point out that the German Federal Institute for Risk Assessment (BfR) published its risk assessment on BPA in April 2023 which clearly varies from EFSA's revised opinion on BPA adopted on 6 December 2022. Thus, there are still unresolved scientific differences in the risk assessment of BPA between renowned scientific bodies. Regardless of these different findings, the European Commission has proposed a far-reaching ban on BPA and other bisphenols in food contact materials. We regret that no further efforts were made to resolve and objectively harmonize the divergent scientific assessments prior to the publication of the regulatory proposal. This will jeopardise confidence in a credible and consistent future chemicals strategy in Europe and in the objectivity of the scientific authorities.

We also would like to underline that the use of BPA for food contact materials and articles is still permitted by the worldwide acknowledged US Food and Drug Administration (FDA), if the specified migration limits are adhered to. A BPA ban for food contact materials in the EU will represent a discrimination against export-orientated suppliers in the EU who deliver their products to third countries. As the alternatives to BPA are more expensive, the competitiveness of European suppliers in foreign markets, where the use of BPA is still permitted, will be hindered accordingly. For European packaging manufacturer it is highly unfeasible to differentiate between the production for EU and non-EU customers.

In addition, we would like to point out that there is no harmonised measurement method for detecting BPA in food contact materials. This could lead to considerable problems once the European regulation comes into force and measurements are conducted by the competent authorities or private laboratories to check compliance.

### Article-related comments

#### Article 3 „Prohibition of the use of BPA“

We ask for clarification that only the "intentional" use of BPA is subject to the ban. This creates legal certainty and clarity.

The text in the draft regulation should therefore be adapted as follows: „The **intentional** use of BPA at any manufacturing stage of food contact ...“

In practice, food, cosmetics, and pharmaceutical packaging are produced on the same production lines. While cosmetics and pharmaceutical packaging, which are not covered by the scope of the Regulation, are allowed to be manufactured with BPA-containing coatings within the allowed limits, this will not be the case for food packaging any more in future. The use of dedicated lines for food packaging is not economically feasible and will represent a big burden on the industry in these difficult times.

The use of the same production lines might lead to cross- contamination, as traces of BPA might still be present in the production equipment, even after cleaning measures. **Would this cross-contamination be considered as “intentional” use of BPA to produce food contact materials and therefore forbidden? Is there a specific minimum “due diligence” standard that a producer can observe to prove that “reasonable” efforts were done to avoid cross-contamination?**

#### Article 10 “Transitional provisions”

The term "high acidity" in recital 15 covers more than the three product groups mentioned in Art. 10, 2 a). According to the established classification of acidic foods found in the Plastics Regulation (EU) No 10/2011, other food categories like mustard, spreads and jams are acidic, too. Therefore, it would be better to assign a specific limit for the pH value, with all products having a pH value lower than the specified limit considered to be acidic.

Another solution would be to write: „... to be filled with highly acidic food, processed fruits, vegetables and fish products;“

We are looking forward to a revised version of the draft regulation that addresses the existing concerns and challenges to ensure the practical workability of the new legislation throughout the value chain and across various sectors.