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COMMISSION REGULATION (EU) .../...

of XXX

correcting Commission Regulation (EU) 2024/3190 on the use of bisphenol A (BPA) and other bisphenols and bisphenol derivatives with harmonised classification for specific hazardous properties in certain materials and articles intended to come into contact with food, amending Regulation (EU) No 10/2011 and repealing Regulation (EU) 2018/213

(Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food and repealing Directives 80/590/EEC and 89/109/EEC¹, and in particular Article 5(1), points (a), (h) and (i) thereof,

Whereas:

- (1) Commission Regulation (EU) 2024/3190² lays down rules on the use of bisphenol A (BPA) and other bisphenols and bisphenol derivatives with harmonised classification for specific hazardous properties in certain materials and articles intended to come into contact with food.
- (2) That Regulation contains certain inconsistencies and errors, which are important to correct to ensure the correct functioning of the Regulation.
- (3) In Article 3 of Regulation (EU) 2024/3190, the reference to ‘BPA and its salts’ is inconsistent with the definition of ‘bisphenol’ laid down in Article 2(2)(c) of that Regulation, which includes the salt form of the bisphenol, and with the rest of the text which simply refers to ‘BPA’. Therefore, the words ‘and its salts’ should be deleted from Article 3.
- (4) Article 3(2) of Regulation (EU) 2024/3190 aims to provide a derogation from the prohibition laid down in Article 3(1) of that Regulation to use BPA in the manufacture of the food contact materials and articles referred to in Article 1(2) of that Regulation and from the placing on the Union market of such food contact materials and articles manufactured using BPA. For this reason and for consistency with Article 3(1), Article

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¹ Regulation (EC) No 1935/2004 of the European Parliament and of the Council of 27 October 2004 on materials and articles intended to come into contact with food, OJ L 338, 13.11.2004, p. 4, ELI: <http://data.europa.eu/eli/reg/2004/1935/oj>.

² Commission Regulation (EU) 2024/3190 of 19 December 2024 on the use of bisphenol A (BPA) and other bisphenols and bisphenol derivatives with harmonised classification for specific hazardous properties in certain materials and articles intended to come into contact with food, amending Regulation (EU) No 10/2011 and repealing Regulation (EU) 2018/213, OJ L 2024/3190, 31.12.2024, ELI: <http://data.europa.eu/eli/reg/2024/3190/oj>.

3(2) should also refer to the placement on the Union market of these food contact materials and articles.

- (5) Article 9(2) of Regulation (EU) 2024/3190 aims to ensure that an appropriate method of analysis is used to determine compliance with Article 4 of that Regulation. Since Article 4 prohibits the presence of ‘residual BPA’, Article 9(2)(c) of that Regulation should also refer to ‘residual BPA’.
- (6) As explained in recitals 16 and 17 of Regulation (EU) 2024/3190, Article 11 of that Regulation aims to provide transitional provisions for the first placing on the market of single-use final food contact articles. Since that Article 11 however mistakenly refers only to food contact materials ‘placed on the market’, it should be corrected. For consistency reasons, recital 18 of Regulation (EU) 2024/3190 should also be corrected.
- (7) The aim of Article 12(3) of Regulation (EU) 2024/3190 is to allow for repeat-use final food contact articles, which were first placed on the market in accordance with paragraphs 1 and 2 of that Article, to remain on the market for a maximum period of 12 months, in order to allow businesses to pass on those food contact articles to customers, as explained in recital 22 of that Regulation. Since the end of the transitional period for food contact articles in paragraph 1 is different from the end of the transitional period for food contact articles in paragraph 2, the indicated date of 20 January 2029 only applies to articles first placed on the market in accordance with paragraph 2. Therefore, an additional date of 20 July 2027 should be set out in Article 12(3) for the food contact articles referred to in paragraph 1 and first placed on the market by 20 July 2026.
- (8) The current wording of point 3 of Annex III to Regulation (EU) 2024/3190 requires the identification of both intermediate food contact materials and final food contact articles in the declaration of compliance, which may pose confidentiality issues for business operators. However, as explained in recital 14 of that Regulation, the aim is to require the identity of food contact materials and articles from one business to another. Therefore, the wording should be corrected to require that the identity of the intermediate food contact material or final food contact article for which the declaration of compliance is issued, is mentioned.
- (9) Regulation (EU) 2024/3190 should therefore be corrected accordingly.
- (10) The measures provided for in this Regulation are in accordance with the opinion of the Standing Committee on Plants, Animals, Food and Feed.

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EU) 2024/3190 is corrected as follows:

- (1) in recital 18, the fourth sentence is replaced by the following:

‘Therefore, in order to allow enough time to bring the applications for these types of packaging to commercial scale and to avoid food waste, it is appropriate to allow final food contact articles using varnishes and coatings manufactured with BPA, specifically for the packaging used to preserve fruit, vegetables and processed fishery products, to be first placed on the market during a period of 36 months after the entry into force of this Regulation.’

- (2) Article 3 is replaced by the following:

‘Article 3

Prohibition of the use of BPA

1. The use of BPA in the manufacture of food contact materials and articles referred to in Article 1(2) and the placing on the Union market of food contact materials and articles manufactured using BPA is prohibited.
2. By way of derogation from paragraph 1, BPA may be used in the manufacture of food contact materials and articles for a specific application and the placing on the Union market of such food contact materials and articles is allowed in accordance with Annex II, subject to the restrictions laid down therein.’

- (3) in Article 9, paragraph 2, is replaced by the following:

‘2. For the selection of methods used to verify that a food contact material or article does not contain residual BPA, another hazardous bisphenol or a hazardous bisphenol derivative, or does not release those substances into food above the specified detection limit or specific migration limit, the following additional rules apply:

- (a) where the European Union Reference Laboratory (‘EURL’) for food contact materials has developed or recommended a method, that method shall be used;
- (b) a method shall have a detection limit of 1 µg/kg unless a different detection limit is set out in Annex II, or as part of the method recommended in accordance with point (a);
- (c) to verify that a food contact material or article does not contain residual BPA, another hazardous bisphenol or a hazardous bisphenol derivative, an extraction method shall be used.’

- (4) Article 11 is replaced by the following:

‘Article 11

Transitional provisions concerning single-use final food contact articles

1. Single-use final food contact articles manufactured using BPA and complying with the rules as applicable before the date of entry into force of this Regulation, which do not comply with the rules in this Regulation, may be first placed on the market until 20 July 2026.
2. By way of derogation from paragraph 1, the following single-use final food contact articles complying with the rules as applicable before the date of entry into force of this Regulation, which do not comply with the rules in this Regulation, may be first placed on the market until 20 January 2028:
 - (a) single-use final food contact articles intended for the preservation of the following foodstuffs:

- (i) fruits or vegetables, excluding products defined in Annex I to Council Directive 2001/112/EC ⁽¹³⁾; or
 - (ii) fishery products as defined by Regulation (EC) No 853/2004 of the European Parliament and of the Council ⁽¹⁴⁾;
 - (b) single-use final food contact articles on which a varnish or coating manufactured using BPA has only been applied to the exterior metal surface.
3. Single-use final food contact articles first placed on the market in accordance with paragraphs 1 and 2 may be filled with food and sealed during the 12 months following the expiry of the applicable transitional period. The resulting packaged food may be placed on the market until exhaustion of stocks.’.
- (5) in Article 12, paragraph 3 is replaced by the following:
- ‘Repeat-use final food contact articles that were first placed on the market in accordance with paragraph 1 may remain on the market until 20 July 2027. Repeat-use final food contact articles that were first placed on the market in accordance with paragraph 2 may remain on the market until 20 January 2029.’.
- (6) in Annex III, point 3 is replaced by the following:
- ‘(3) the identity of the intermediate food contact materials or final food contact articles;’.

Article 2

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
Ursula VON DER LEYEN