



Brussels, 17 September 2018

NOTE TO THE MEMBERS OF THE STANDING COMMITTEE ON PLANTS, ANIMALS, FOOD AND FEED (PAFF) TO ACHIEVE A HARMONISED IMPLEMENTATION OF THE EU LEGISLATION

Subject: Implementation of Commission Regulation (EU) No 2018/213 on the use of bisphenol A in varnishes and coatings intended to come into contact with food and amending Regulation (EU) No 10/2011 as regards the use of that substance in plastic food contact materials

Commission Regulation (EU) No 2018/213 has been in force since 6 March 2018 and applies from 6 September 2018. Article 6 of this Regulation states that:

"Varnished or coated materials and articles and plastic materials and articles that were lawfully placed on the market before 6 September 2018 may remain on the market until exhaustion of stocks."

As the food contact materials supply chain is complex, involving several stages and potentially several manufacturers and processors, the Expert Working Group on Food Contact Materials of the PAFF has discussed the application of Regulation (EU) No 2018/213, in particular for varnished or coated materials and articles, in order to have a common understanding and ensure a coherent implementation of the Regulation.

Consequently, the Expert Working Group on Food Contact Materials of the PAFF is of the understanding that:

1. Regulation (EU) No 2018/213 concerns a restriction on the amount of BPA which is allowed to migrate from a varnish or coating, which has been manufactured using BPA, applied to [another] material or article. Requirements on verification of compliance, declaration of compliance and supporting documentation as well as the transitional arrangements laid down in Article 6, refer to varnished or coated materials and plastic materials, and not to varnishes or coatings or to materials intended for applying as a varnish or coating
2. Whereas, "materials and articles" within the meaning of Article 1(2) of Regulation (EC) No 1935/2004 may include intermediate materials and articles, which are not in their finished state; in order to verify compliance with the specific migration limit (SML) laid down in Article 2 of Regulation (EU) No 2018/213, varnishes or coatings must be in their finished state and intended to be brought into contact with food or already in contact with food.
3. If a coating is unfinished, it may not be possible to verify compliance as the finishing of that layer can affect the migration of BPA, or it might simply not be possible to

perform a migration test. Consequently Regulation 2018/213 should not be considered to apply to the placing on the market of unfinished varnished or coated materials or to unfinished plastics. Therefore the Regulation including Article 6 only applies to varnishes and coatings in their finished state.

4. As a consequence of the reasoning developed above, once the varnish or coating has been applied to a secondary layer and no further processing is carried out that affects the physico-chemical properties of the varnish or coating itself and moreover the migration of BPA into food, the varnish or coating can be considered in its final state for the purposes of compliance with Regulation (EU) No 2018/213, including Article 6. Examples *may* include but are not restricted to; coated or varnished sheet or coil metal or empty varnished or coated cans and closures.
5. Further processing may be carried out in order to complete the manufacturing of the final materials and articles but which again, does not affect the physico-chemical properties of the varnish or coating itself or the migration of BPA into food. Examples *may* include but are not restricted to; the assembly of two- or three- piece cans e.g. by the food filler.
6. The varnish or coating in its finished state may be considered as falling within the scope of "placing on the market" provided that it falls within the definition laid down in Article 2(1)(b) of Regulation (EC) No 1935/2004. Therefore placing on the market applies regardless of the ownership and/ or commercial arrangements in place in the supply chain.

The Expert Working Group nevertheless recognises that only the Court of Justice has the competence to provide a final interpretation of the applicable legislation.