

18 January 2022, Brussels

FEAD feedback to the draft Commission Regulation on recycled plastic materials and articles intended to come into contact with foods, and repealing Regulation (EC) No 282/2008

FEAD, the European Waste Management Association, representing the private waste and resource management industry across Europe, **welcomes the draft regulation in its intention to promote the development of new recycling technologies and to harmonise the scope and controls on all stages of plastic recycling, facilitating recycled Food Contact Material (FCM) to be placed on the market.**

However, **FEAD believes that the draft does not really meet the announced objectives of the Commission to ‘secure a high level of protection of human health’ as it rather focuses on decontamination methods (which technology/process can decontaminate) instead of considering the final decontamination performance (migration threshold, etc.).**

Having a tool capable of decontaminating is indisputably necessary but far from sufficient; everything will depend on how the tool is used and maintained. Relevant is the outcome and the residual contamination in the recycled product. **A regulation based on performance would allow to achieve both, the protection of human health (i.e., what performance must the secondary raw material have in terms of contamination, which contaminants and what maximum percentage and the technical requirements of further users) and the technical requirements of the secondary raw material.**

In a nutshell, the draft Regulation provides detailed prescriptions on the definition of decontamination technologies but lacks performance details in terms of contaminants, thresholds, methodology and frequency. The decontamination process is only a mean but not the final goal. FEAD is particularly surprised about the maximum percentage of 5% of non-food waste proposed in page 2 of the annexes, which does not seem to be based on scientific evidence.

1. Definitions (Article 2)

The definitions proposed need to be clarified and aligned with the Waste Framework Directive, particularly in the way they cover the recycling chain and the scope of the different actors and processes:

a. ‘Recycling technology’ and ‘decontamination technology’

‘Recycling technology’ is limited to the decontamination step. This means, in case of PET, e.g., that a flake reprocessor that does not implement this step (e.g., in film extrusion, this step is sometimes included in the extrusion) would not be a recycler, but only a ‘pre-worker’ (pre-processor) and the film manufacturer would be the recycler. This conflicts with the current end-of-waste definition and would require a film manufacturer to obtain a waste management permit. The term recycler is thus also used differently across EU legislation, which leads to contradictions.

In addition, decontamination must be permitted to meet the needs of the waste. For example, post-industrial recyclates (PIR) from production surpluses, which is collected, transported and regranulated under food conditions, does not require a decontaminating step as it has not yet been in contact with food.

To explicitly consider all decontamination processes, which may be solely mechanical and not alter the chemical structure of the polymer, the two definitions, and those referring to them, should be amended accordingly, i.e., 'a combination of physical and/or chemical concepts, principles, and practices.

It should also be clarified whether chemical (such as pyrolyse) and enzymatic recycling are included in the scope of the Regulation.

b. 'Recycling process'

The definition conflicts with the term 'recycling' as defined in the WFD by covering all stages of the production chain. It should be either aligned with the WFD definitions or the defined term replaced by 'recycling and converting process'.

c. 'Plastic input' and 'recycled plastic'

To provide clarity, we recommend replacing the term 'plastic input' by 'recycled plastic' and the term 'recycled plastic' by 'food grade recycled plastic'. The output of pre-processing operations (e.g., sort, shred, wash) is already considered recycled plastic and not plastic input.

d. 'Recycling facility'

A unique localization of the complete process is difficult to imagine and would risk excluding actors who cannot have all the steps of the process on-site.

e. 'Recycling scheme'

The sorting step (in sorting facilities) should be included in the recycling scheme. The term is in general confusing because it includes only collection (and maybe sorting) that is usually considered as a previous step before recycling. A suggestion is to replace it by 'collecting and sorting scheme'.

f. 'Recycler'

The definition reduces the term 'recycler' to the decontamination process when it is in charge of pre-treatment operations. We suggest including: 'operates the recycling facility and the pre-processing and/or part of the decontamination process'.

2. Requirements for collection and pre-processing (Article 6)

Requiring that the plastic waste originates only from *plastic materials and articles manufactured in accordance with Regulation (EU) No 10/2011 or recycled plastic materials and articles manufactured in accordance with this Regulation* poses a problem with regards to non-EU materials.

Article 6(2)(b)(i) should be amended in the sense that 'the collection system does not foresee the collection of hazardous substances, but does not have to exclude occasional incorrect sorting by consumers'. Incorrect discards cannot be excluded in practice.

In relation to the required quality assurance system, clarifications are needed to define which certification (ISO9001, EN 15434:2007...) can apply. It also remains unclear which actors of the waste management system should be audited.

3. Requirements for the operation of recycling schemes (Article 9)

The requirements are unclear especially in relation to the single legal entity managing the scheme and in relation to the notification of existing schemes.

4. Requirements for the development of a novel technology and conditions on the operation of recycling installations applying novel technologies (Article 10 and 11)

A definition of novel technology is greatly needed. Also guidelines for recycled plastic to comply with Article 3 of Regulation (EC) No 1935/2004 would be welcomed.

The reference in Article 10(2) should be corrected as there is no Article 4(2)(b). Finally, FEAD would like to point out, that the compliance monitoring summary sheet (Annex II) cannot be completely filled in for a novel recycling technology.

5. Monitoring and reporting of contamination levels (Article 13)

Further guidance is needed on the contaminants to be checked under Article 13. There is no such thing as a list of contaminants. The guidance document should also consider substances that cannot be properly analysed in bales.

6. Assessment of novel technologies and decision on the suitability of a novel technology (Article 14 and 15)

FEAD welcomes the possibility opened for new technologies to exist on the market before their assessment has been completed. However, as the assessment procedure may be prolonged up to several years, we suggest that such assessment of novel technology is also allowed at pilot plant level, to avoid long-term investments that may not be authorised at the end of the process. The required data should be described in more detail to avoid unnecessary delays.

In addition, a time framework should be given as for when a technology cannot longer be supplied after being found unsuitable. Also the handling of material that already entered the market prior to the decision on unsuitability should be specified.

7. Compliance monitoring summary sheet and verification of the operation of a decontamination installation (Article 26)

Traceability and monitoring requirements will force recyclers to digitalise at a rapid pace, which will entail both significant investments and process changes, and should be considered in the transitional period. Updating requirements should be specified.

FEAD Secretariat

info@fead.be