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Delegations will find attached document D044711/03.

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

**of **XXX****

**amending and correcting Regulation (EU) No 10/2011 on plastic materials and articles  
intended to come into contact with food**

(Text with EEA relevance)

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

of **XXX**

**amending and correcting Regulation (EU) No 10/2011 on plastic materials and articles intended to come into contact with food**

(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/EEC<sup>1</sup>, and in particular Article 5(1)(a), (c), (d), (e), (h), (i) and (j), Article 11(3) and Article 12(6) thereof,

Whereas:

- (1) Commission Regulation (EU) No 10/2011<sup>2</sup> ('the Regulation') lays down specific rules as regards plastic materials and articles intended to come into contact with foods. In particular, it establishes a Union list of substances which may be used in the manufacture of plastic food contact materials and articles.
- (2) Since the Regulation's adoption, the European Food Safety Authority ('the Authority') has published further reports on particular substances that may be used in food contact materials as well as on the permitted use of substances that have been authorised previously. In addition, certain textual errors and ambiguities were identified. In order to ensure that the Regulation reflects the most recent findings of the Authority and in order to remove any doubt as regards its correct application, the Regulation should be amended and corrected.
- (3) The definition of 'non-fatty foods' in point (16) of Article 3 of the Regulation contains a reference to food simulants laid down in an annex to the Regulation. As the definition was intended to refer to food simulants listed in Table 2 of Annex III, the reference should be corrected accordingly.
- (4) Regulation (EU) No 10/2011 uses the term "hot-fill" in the context of setting restrictions on the use of certain authorised monomers in materials and articles intended to act as a receptacle for hot food. In order to clarify the scope of such

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<sup>1</sup> OJ L 338, 13.11.2004, p. 4.

<sup>2</sup> Commission Regulation (EU) No 10/2011 of 14 January 2011 on plastic materials and articles intended to come into contact with food (OJ L 12, 15.1.2011, p. 1).

restrictions, it is appropriate to provide a definition of the term specifying the temperatures at which such restrictions apply.

- (5) Article 6(3) of Regulation (EU) No 10/2011 establishes a derogation as regards the use of salts of specified metals derived from authorised acids, phenols or alcohols, even though these salts are not included in the Union list of authorised substances. As the conclusion of the Authority on which the derogation is based was not specific to certain categories of salts,<sup>3</sup> the qualification in point (a) of Article 6(3) that the derogation extends to “double salts and acid salts” is superfluous. Since that qualification could be interpreted as supporting an *a contrario* interpretation according to which there could be categories of salts to which the definition does not apply, it should be clarified that the derogation applies to all salts of the listed metals, and the qualification should be deleted.
- (6) Article 11(2) of the Regulation sets a generic specific migration limit for all substances for which no specific migration limit has been set. The absence of a prescribed limit for particular substances reflects the view that such specification was not necessary for the purposes of ensuring compliance with the safety criteria laid down in Article 3 of Regulation (EC) No 1935/2004. As the migration levels from all substances are already subject to compliance with an overall migration limit, the existence of a parallel generic specific limit is unnecessary and gives rise to a duplication of migration testing and development of testing methods. In order to avoid the imposition of unnecessarily burdensome testing obligations, the provision establishing generic specific migration limits should be deleted.
- (7) Pursuant to Article 13(3), and Annex I and Annex II to the Regulation, there are certain substances in respect of which it must not be possible to detect any level of migration. The prohibition is justified on the grounds that any degree of migration of such substances could pose a risk to health. As the presence of a particular substance can only be determined in so far as it reaches a detectable threshold, its absence can also only be determined by reference to that threshold. As the rules governing the establishment and expression of detection thresholds are repeated throughout the Regulation, it is appropriate to simplify the Regulation by deleting repetitions of those rules and by consolidating such rules within a single provision in the Regulation.
- (8) As specific migration limits are expressed in mg/kg food, the same measurement unit should also be used for the verification of compliance of a cap or closure, as a consistent approach avoids the potential for conflicting results. It is therefore appropriate to remove the option to express the migration from caps or closures in mg/dm<sup>2</sup>.
- (9) Pursuant to Article 18(4) of the Regulation, the compliance of materials and articles that were not yet in contact with food is to be verified in accordance with detailed rules laid down in Section 3.1 of Chapter 3 of Annex V. As the provisions laid down in Sections 3.2, 3.3 and 3.4 of the same Chapter may also be relevant to verification of compliance, it is appropriate to amend Article 18(4) so that it refers to the Chapter 3 as a whole.
- (10) Table 1 of Annex I to the Regulation contains the Union list of authorised substances which includes a reference to simulant D. Since the Regulation distinguishes between

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<sup>3</sup> EFSA Journal 2009; 7(10):1364.

food simulants D1 and D2, the references to food simulant D should be replaced by more specific references to food simulant D1 or D2 for all substances.

- (11) The substance silicon dioxide, silanated (food contact material ('FCM') substance No 87) is currently authorised for use as an additive in all plastics. Also covered under FCM No 87 is a sub-category of this substance, synthetic amorphous silicon dioxide, silanated, which is produced using primary particles in nanoform. Under Article 9(2) of the Regulation, substances in nanoform are only to be used if explicitly authorised and mentioned in the specifications in Annex I. Taking account of the available scientific information, and the absence of migration of primary nanoparticles of this synthetic form, the Authority has concluded that that synthetic amorphous silicon dioxide, silanated, produced from primary particles in nanoform does not raise a safety concern when only aggregates larger than 100 nm and larger agglomerates are present in the final material<sup>4</sup>. The Union list should therefore be amended to add a specification of substance FCM No. 87 as regards the form in which it may be used in the final material.
- (12) The Authority has adopted a scientific opinion on the extension of the use of perfluoromethyl perfluorovinylether (MVE, FCM No 391)<sup>5</sup>. According to that opinion the substance is not a safety concern if used as a monomer for fluoro- and perfluoropolymers intended for repeated use applications, where the contact ratio is 1 dm<sup>2</sup> surface in contact with not less than 150 kg food such as in sealing and gaskets. It is therefore appropriate to add this application to the specifications set out in relation to substance FCM No 391.
- (13) The authorisation of the substance 'mixture of (35-45 % w/w) 1,6- diamino-2,2,4-trimethylhexane and (55-65 % w/w)1,6-diamino- 2,4,4-trimethylhexane' (FCM No 641) refers in column 11 to note (10) in Table 3 of Annex I to the Regulation. Compliance is therefore verified by residual content per food contact surface area (QMA) in case of reaction with food or simulant. Verification of compliance by QMA is only appropriate if a migration testing method is unavailable or impractical. As adequate migration testing methods are available, and a specific migration limit has been specified, the possibility to verify compliance by residual content should be removed from the entry for this substance in the Regulation.
- (14) The authorisation of the substance bis(methylbenzylidene)sorbitol (FCM No 752) refers in column 3 to four CAS numbers. These CAS numbers have been incorrectly separated in print. Therefore the authorisation of this substance should be corrected by separating the CAS numbers correctly.
- (15) The Authority adopted a scientific opinion concerning substance FCM No 779 in 2007<sup>6</sup>. In its opinion the Authority observed that analytical methods for the verification of compliance to the migration limits are available and well described. Nevertheless, the present authorisation of this substance contains a reference to note (1) of Table 3 of Annex I to the Regulation, which states that, pending the availability of an analytical method, compliance should be verified by residual content per food contact surface area (QMA). Verification of compliance by QMA is only appropriate if a migration testing method is unavailable or impractical. Since the Authority

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<sup>4</sup> EFSA Journal 2014; 12(6):3712.

<sup>5</sup> EFSA Journal 2015;13(7):4171.

<sup>6</sup> EFSA Journal 2007, 555-563, 1-31, doi: 10.2903/j.efsa.2007.555.

considers that analytical methods are available and well described, the reference to note (1) should be deleted. The Authority further notes in its opinion that a risk exists that migration levels in fatty foods may exceed the applicable migration limit, which was not referred to in the present authorisation. It is therefore appropriate to insert a reference to note (2) of Table 3 of Annex I to the Regulation so as to ensure that this risk is considered as part of the verification of compliance.

- (16) At present, the substance with FCM No 974 is included in the Union list and may be used provided that the migration of its hydrolysis product 2,4-di-tert-amylphenol (CAS number 120-95-6), does not exceed 0,05 mg/kg. The migration of FCM No 974 is expressed as the sum of phosphite and phosphate forms and the hydrolysis product 4-t-amylphenol. The Authority has adopted a scientific opinion according to which the migration limit applicable to this hydrolysis product could, without giving rise to health concerns, be extended to 1 mg/kg food, provided that the migration from the product is added to the sum of the phosphite and phosphate forms and the hydrolysis product 4-t-amylphenol, and that the sum of these four substances is subject to the existing 5 mg/kg specific migration limit for FCM No 974. The specifications of FCM No 974 should therefore be amended accordingly.
- (17) The Authority has adopted a scientific opinion<sup>7</sup> on the use of the additive dodecanoic acid, 12-amino-, polymer with ethene, 2,5-furandione,  $\alpha$ -hydro- $\omega$ -hydroxypoly (oxy-1,2-ethanediyl) and 1-propene, FCM No 871. When used as an additive in polyolefins at levels of up to 20 weight % at ambient temperature or below in contact with dry foods as represented by food simulant E, and when migration of the low molecular weight oligomeric fraction less than 1000 Da does not in total exceed 50  $\mu$ g/kg food, the use of this additive does not endanger human health. It is therefore appropriate to include this additive in the Union list and to authorise its use in accordance with those specifications.
- (18) The Authority has adopted a scientific opinion<sup>8</sup> on the use of the starting substance furan-2,5-dicarboxylic acid (FCM No 1031). When used as a monomer in the production of polyethylene furanoate (PEF) polymer this substance does not raise a safety concern for the consumer when the migration of the substance itself does not exceed 5 mg/kg food, and when migration of the oligomers less than 1000 Da does not exceed 50  $\mu$ g/kg food. It is therefore appropriate to include this starting substance in the Union list and to authorise its use in accordance with the specified migration limits.
- (19) The Authority has noted that PEF containing a substance with FCM No 1031 can safely be used in contact with non-alcoholic foods in accordance with its specified migration limits. However when the compliance of such a plastic is verified with food simulant D1 in accordance with the food simulant assignments in Table 2 of Annex III, there is a risk of interaction between this food simulant and the plastic. As this interaction would not occur in contact with the non-alcoholic foods for which this food simulant is assigned, the use of food simulant D1 for verification of compliance would give unrealistic results in such cases. According to the Authority, therefore, when verifying whether the use of this substance complies with this Regulation, food simulant C should be used for non-alcoholic foods to which Table 2 of Annex III

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<sup>7</sup> EFSA Journal 2014;12(11):3909.

<sup>8</sup> EFSA Journal 2014;12(10):3866.

assigns food simulant D1. It is therefore appropriate to add a note on the verification of compliance to substance with FCM No 1031 to indicate that food simulant D1 should be substituted with food simulant C in case of testing.

- (20) The Authority has adopted a scientific opinion<sup>9</sup> on the use of the starting substance 1,7-octadiene (FCM No 1034). When used as a crosslinking co-monomer in the manufacture of polyolefins for contact with any type of foods for long term storage at room temperature, including hot-fill conditions, and the migration of the substance does not exceed 0.05 mg/kg food, the use of this substance does not endanger human health. It is therefore appropriate to include that additive in the Union list and to authorise its use in accordance with those specifications.
- (21) The Authority has adopted a scientific opinion<sup>10</sup> on the use of the polymer production aid perfluoro{acetic acid, 2-[(5-methoxy-1,3-dioxolan-4-yl)oxy]}, ammonium salt (FCM No 1045). When used as polymer production aid during the manufacture of fluoropolymers which are produced under high temperature conditions of at least 370 C the use of this substance does not endanger human health. Therefore, it should be added to the Union list and its use authorised subject to compliance with those specifications.
- (22) The Authority has adopted a scientific opinion<sup>11</sup> on the use of the additive ethylene glycol dipalmitate (FCM No 1048). The Authority concluded that when the substance is produced using a fatty acid precursor conventionally obtained from edible fats or oils and the migration of ethylene glycol is limited by including it in the group SML(T) for ethylene glycol, the use of this additive does not endanger human health. Therefore, that additive should be included in the Union list subject to the requirement that it complies with those specifications. In particular, it should be added to the group to which the SML(T) applies and entry (2) of Table 2 of Annex I to Regulation (EU) No 10/2011 should be amended accordingly.
- (23) The Authority has adopted a scientific opinion<sup>12</sup> on the use of the additive zinc oxide, nanoparticles, uncoated (FCM No 1050) and zinc oxide, nanoparticles, coated with [3-(methacryloxy)propyl] trimethoxysilane (FCM No 1046). The Authority concluded that these additives do not migrate in nanoform from polyolefins. In a further opinion the Authority extended this conclusion to the migration of zinc oxide nanoparticles to unplasticised polymers<sup>13</sup>. It therefore stated that its safety evaluation focused on the migration of soluble ionic zinc, which should respect the specific migration limit for zinc specified in Annex II of the Regulation. For the coated form of zinc oxide, nanoparticles, the levels of migration of [3-(methacryloxy)propyl]trimethoxysilane should remain within the existing specific migration limits for this substance, namely 0.05 mg/kg. Therefore, the two additives should be included in the Union list.
- (24) The Authority has adopted a scientific opinion<sup>14</sup> on the use of the additive N,N'-bis(2,2,6,6-tetramethyl-4-piperidiny) isophthalamide (FCM No 1051). The Authority concluded that when its migration does not exceed 5 mg/kg food, the use of this

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<sup>9</sup> EFSA Journal 2015;13(1):3979.

<sup>10</sup> EFSA Journal 2014;12(6):3718.

<sup>11</sup> EFSA Journal 2015;13(2):4019.

<sup>12</sup> EFSA Journal 2015;13(4):4063.

<sup>13</sup> EFSA Journal 2016;14(3):4408.

<sup>14</sup> EFSA Journal 2014;12(10):3867.

additive does not endanger human health. Therefore, it should be included in the Union list subject to a migration limit of 5 mg/kg food.

- (25) The Authority has adopted a scientific opinion<sup>15</sup> on the use of the starting substance 2,4,8,10-tetraoxaspiro[5.5]undecane-3,9-diethanol,β3,β3,β9,β9-tetramethyl- ('SPG', FCM No 1052). The Authority concluded that when this substance is used as a monomer in the production of polyesters, when its migration does not exceed 5 mg/kg food, and when the migration of the oligomers of less than 1000 Da does not exceed 50 µg/kg food (expressed as SPG), the use of this additive does not endanger human health. Therefore, it should be included in the Union list and its use authorised subject to compliance with those specifications.
- (26) The authorisation of the substances with FCM Nos 871, 1031 and 1052 provided for in this Regulation, requires that the migration of the low molecular weight oligomeric fraction less than 1000 Da shall not in total exceed a migration limit of 50 µg/kg food. Analytical methods to determine the migration of this oligomeric fraction are complex. A description of those methods is not necessarily available to competent authorities. Without a description it is not possible for the competent authority to verify that the migration of oligomers from the material or article complies with the migration limit for these oligomers. Therefore, business operators placing on the market the final article or material containing that substance should be required to provide a description of the method and a calibration sample if required by the method.
- (27) The Authority has adopted a scientific opinion<sup>16</sup> on the use of the additive fatty acids, C16–18 saturated, hexaesters with dipentaerythritol (FCM No 1053). Since any content of lower esters (e.g. penta-, tetra-,) does not give rise to a safety concern, the Authority concluded that the use of fatty acids, C16–18 saturated, esters with dipentaerythritol does not endanger human health, provided that the substance is produced using a fatty acid precursor obtained from edible fats or oils. Therefore, the additive fatty acids, C16–18 saturated, esters with dipentaerythritol should be included in the Union list without restricting it to hexaesters, subject to the requirement that its fatty acid precursor is obtained from edible fats or oils.
- (28) The Authority has adopted a scientific opinion<sup>17</sup> on the safety of aluminium from dietary intake, which establishes a tolerable weekly intake of 1 mg aluminium per kg body weight per week. Applying the conventional exposure assumptions for food contact materials, the migration limit would have to be set at 8,6 mg/kg food. The opinion however notes that the current dietary exposure of a significant part of the Union's population likely exceeds this level. Therefore, it is appropriate to limit the contribution from exposure by food contact materials to the overall exposure by applying an allocation factor of 10% to the conventionally derived migration limit. Therefore, a migration limit for aluminium of 1 mg/kg food is considered appropriate for food contact materials.
- (29) The Authority has adopted a scientific opinion on dietary reference values for zinc<sup>18</sup>. This confirms the opinion expressed by the Scientific Committee on Foods (SCF) in

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<sup>15</sup> EFSA Journal 2014;12(10):3863.

<sup>16</sup> EFSA Journal 2015;13(2):4021.

<sup>17</sup> EFSA Journal (2008) 754, 1-34.

<sup>18</sup> EFSA Journal 2014;12(10):3844.

2002<sup>19</sup> which sets the tolerable upper level of zinc for adults to 25 mg per day. In Annex II of Regulation (EU) No 10/2011, the migration limit for zinc is set at 25 mg/kg food. As dietary exposure from other sources significantly contributes to the total exposure, and according to the Authority, the upper level could be exceeded in combination with the current migration limit<sup>13</sup>. Therefore to reduce the contribution from food contact materials to the total exposure to zinc, and taking into account that the total dietary exposure to zinc is in the range of the upper limit but generally below, it is appropriate to use an allocation factor of 20 % for the exposure from food contact material. It is therefore appropriate to amend the migration limit specified in Annex II to the Regulation to 5 mg/kg food.

- (30) A single specification of the amount of saponifiable matter in vegetable oil to be used for food simulant D2 is sufficient to specify that food simulant. Therefore, any further specifications are not necessary and the note below Table 1 of Annex III to the Regulation should be deleted
- (31) The Regulation does not lay down specific migration testing provisions for fresh unpeeled fruits and vegetables as no food simulant has been assigned to these products. Possible health risks to consumers from migrating substances, including substances that should not be present to any extent can therefore remain undetected. A food simulant should thus be assigned to those products in Table 2 of Annex III to Regulation (EU) No 10/2011. Those fruits and vegetables vary widely in properties, but are dry. Food simulant E is suitable for dry foods but may overestimate the contact surface depending on size and shape of the fruits and vegetables. Moreover, fruits and vegetables may be peeled before consumption removing part of the migrants. The overestimation should be addressed with a correction factor and the correction procedure should be set out in point 3 of Annex III to the Regulation.
- (32) Only food simulant A is assigned for fresh vegetables that are peeled and/or cut. As such vegetables can be acidic, it is appropriate that food simulant B is also specified for peeled and/or cut vegetables. Therefore, that category should be added to Table 2 of Annex III to the Regulation.
- (33) Testing in several different food simulants provides no added value if it is scientifically evident that one food simulant always yields the highest migration results for a specific substance or material, and this food simulant can therefore be considered as the most severe for such a substance or material. Therefore, a general derogation to the assignment of food simulants should be included in Annex III to the Regulation to allow the testing in only one food simulant if appropriate scientific evidence is documented showing that that food simulant is the most severe.
- (34) Point 5 of Annex IV to the Regulation requires a written confirmation that the requirements laid down in Regulation (EC) No 1935/2004 are met. However, most of the provisions set out in Regulation (EC) No 1935/2004 cannot directly apply to plastic materials or articles, or to the substances used to manufacture those materials or articles. Therefore the reference to Regulation (EC) No 1935/2004 should be made more specific by adding references to the provisions of that Regulation to which confirmation of compliance is required.

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<sup>19</sup> SCF/CS/NUT/UPPLEV/62 Final, [http://ec.europa.eu/food/fs/sc/scf/out177\\_en.pdf](http://ec.europa.eu/food/fs/sc/scf/out177_en.pdf).

- (35) Substances found in food already in contact with a material or article that is being tested for its compliance, do not necessarily originate from that material or article, but may originate from other sources, including other food contact materials or articles with which the food has been in contact previously. Therefore, the amount of a substance present in the food which does not originate from the tested material or article should not be taken into account to determine the compliance with the Regulation. This correction should equally apply to all substances for which the Regulation sets a specific migration limit or for which no migration is permitted. While Section 1.4 of Chapter 1 of Annex V to the Regulation already includes a requirement to take account of contamination from other sources, it is appropriate, in the interests of legal certainty, to clarify that prior to comparing tests results to the applicable specific migration limit, the test result should be corrected to take into account contamination from other sources.
- (36) The migration testing conditions should always be at least as strict as the real conditions of use. Therefore, the second paragraph of Section 2.1.3 of Chapter 2 of Annex V to the Regulation should be amended to make it clear that the testing conditions cannot be adjusted to conditions that are less strict than the real conditions of use.
- (37) Business operators use food processing equipment that is capable of precisely controlling the time and temperature conditions at which the food and the equipment, or, if the food is already packaged, its packaging, are in contact, such as during pasteurisation and sterilisation of the food. Such equipment must always be operated in accordance with good manufacturing practice. Therefore when using the exact worst foreseeable processing conditions applied in such equipment as testing conditions for migration testing, this testing will be representative for the actual migration, and will rule out possible adverse effects to human health. The standardised testing conditions set out in Table 1 and 2 of Annex V may significantly over-estimate migration, and consequently place an unreasonable burden on business operators. Therefore it is appropriate to amend the Regulation to allow the use of actual processing conditions used in such equipment as testing conditions for migration testing.
- (38) Certain worst foreseeable conditions of use may occur in practice under which it is not technically feasible to use food simulant D2 for testing. Appropriate alternative food simulants and rules for verification of compliance should be specified for such conditions.
- (39) The title and titles of columns of Tables 1 and 2 of Section 2.1.3 of Chapter 2 of Annex V to the Regulation do not clearly set out that the temperature specified for testing represents the temperature of the food simulant used during the test. Those Tables should therefore be amended to ensure correct application of the specified testing conditions.
- (40) The temperature specified for testing above 175°C is not representative for all foreseeable conditions to which food contact materials may be subjected. Therefore, appropriate rules for testing above 175°C should be added to Table 2 of Section 2.1.3 of Chapter 2 of Annex V to the Regulation.

- (41) Section 2.1.4 of Annex V to the Regulation specifies testing conditions for contact times beyond 30 days. Those conditions include a formula and provide specific conditions which can both be used to determine a testing temperature for testing at accelerated conditions. It however does not clarify that the formula should only be applied when the standardised testing conditions do not apply. This section also does not clearly specify test conditions for storage at frozen conditions or when an article or material is initially filled under hot-fill conditions. This section should therefore be amended to ensure the formula is only applied for conditions not specified by the standard conditions, and to clarify the test condition for hot-fill and frozen conditions.
- (42) Section 2.1.6 of Annex V to Regulation (EU) 10/2011 specifies that when testing repeated use materials the migration limit should already be respected in the first migration test when testing the migration of substances for which the Regulation specifies that the specific migration is set as non-detectable. This however should include all substances for which this is the case and therefore also include those specified in Annex II to the Regulation. It is therefore appropriate to delete the specific reference from the Regulation and to clarify that this rule applies to all substances for which the migration should be non-detectable.
- (43) If the migration behaviour of a material or article is well established, a single test may suffice to screen its compliance with the Regulation. Provided that a justification for such substitution on the basis of the known behaviour of the material is documented, a series of tests representative for various time and temperature combinations that would foreseeably be used in the real use of a material or article, can be substituted by a single test. Such a substitution may significantly reduce the testing burden, without compromising the high level of human health protection that this Regulation seeks to achieve. Therefore, it is appropriate to provide for the possibility of applying a single screening test in appropriate circumstances.
- (44) Table 3 in Chapter 3 of Annex V to the Regulation currently states that the standardised testing condition OM6 represents the worst case conditions for food simulants A, B and C. However, it also represents the worst case conditions for food simulant D1, and this food simulant can also be used in this test. Therefore, the Regulation should be corrected to include references to food simulant D1 in this context.
- (45) According to the text provided below Table 3 in Section 3.1 of Annex V to the Regulation, the standardised testing condition OM7 represents the worst case conditions for 'fatty food simulants'. However, it only represents the worst case conditions for food simulant D2 and the Regulation should be clarified accordingly.
- (46) It is not always technically feasible to test overall migration with food simulant D2. In Section 3.2 of Annex V, the Regulation only specifies a substitute test for the standardised testing condition OM7. However substitute tests for conditions OM1 to OM6 should also be specified to allow for overall migration testing when food simulant D2 cannot be used under these standardised testing conditions. Therefore it is appropriate to include appropriate substitute tests in this section.
- (47) It is not always technically feasible to test overall migration of repeated use Articles in an oily medium using the same sample three times. Therefore an alternative testing approach should be specified.

- (48) Regulation (EU) 10/2011 does not specify a method for verifying compliance with the overall migration limit set out in Article 12 of the Regulation. However, the accuracy of the determination as to whether materials or articles comply with the prescribed limit is dependent on the existence of an appropriate verification method. It is therefore appropriate to include a reference to Regulation (EC) No 882/2004 which specifies rules for the selection of appropriate methods for the verification of compliance.
- (49) The Regulation does not clearly specify that the application of the Fat Consumption Reduction Factor (FRF) should not allow the specific migration of a single substance to exceed the overall migration limit. It is therefore appropriate to include such a prohibition in Section 4.1 of Chapter 4 of Annex V to the Regulation.
- (50) Regulation (EU) No 10/2011 should therefore be amended accordingly.
- (51) In order to limit the administrative burden and to provide business operators with sufficient time to adjust their practices to comply with the requirements of this Regulation, transitional measures should be provided.
- (52) 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) No 10/2011 is amended as follows:

- (1) Article 3 is amended as follows:
- (a) Point 16 is replaced by the following:
- "(16) 'non-fatty food' means a food for which in migration testing only food simulants other than food simulants D1 or D2 are laid down in Table 2 of Annex III to this Regulation;"
- (b) Point 18 is replaced by the following:
- "(18) 'specification' means composition of a substance, purity criteria for a substance, physico-chemical characteristics of a substance, details concerning the manufacturing process of a substance or further information concerning the expression of migration limits;"
- (c) A new point 19 is added:
- "(19) 'hot-fill' means the filling of any article with a food with a temperature not exceeding 100°C at the moment of filling, after which the food cools down to 50°C or below within 60 minutes, or to 30°C or below within 150 minutes."
- (2) In Article 6(3), point (a) is replaced by the following:

"(a) all salts of aluminium, ammonium, barium, calcium, cobalt, copper, iron, lithium, magnesium, manganese, potassium, sodium, and zinc of authorised acids, phenols or alcohols;"

(3) Article 11 is amended as follows:

(a) Paragraph 2 is deleted;

(b) paragraph 3 is replaced by the following:

"By derogation from paragraph 1, additives which are also authorised as food additives by Regulation (EC) No 1333/2008 or as flavourings by Regulation (EC) No 1334/2008 shall not migrate into foods in quantities having a technical effect in the final foods and shall not:

(a) exceed the restrictions provided for in Regulation (EC) No 1333/2008 or in Regulation (EC) No 1334/2008 or in Annex I to this Regulation for foods for which their use is authorised as food additive or flavouring substances; or

(b) exceed the restrictions set out in Annex I to this Regulation in foods for which their use is not authorised as food additive or flavouring substances."

(c) the following paragraph 4 is added:

"4. Where it is specified that no migration of a particular substance is permitted, compliance shall be established using appropriate migration test methods selected in accordance with Article 11 of Regulation (EC) No 882/2004 that can confirm the absence of migration above a specified limit of detection.

For the purposes of the first subparagraph, unless specific detection limits have been set for particular substances or groups of substances, a detection limit of 0.01 mg/kg shall apply."

(4) In Article 13, paragraph 3 is replaced by the following:

"3. Substances under paragraph 2(b) shall not migrate into food or food simulant, in accordance with Article 11(4). The detection limit set out in the second subparagraph of Article 11(4) shall apply to groups of substances if they are structurally and toxicologically related, including isomers or substances with the same relevant functional group, or to individual substances that are not related, and shall include possible set-off transfer."

(5) In Article 17(3), point (a) is replaced by the following:

"(a) mg/kg using the actual content of the container for which the closure is intended applying the total contact surface of sealing article and sealed container if the intended use of the article is known, while taking into account the provisions of paragraph 2;"

- (6) Article 18 is amended as follows:
- (a) Paragraph 4 is replaced by the following:
- "4. For materials and articles not yet in contact with food verification of compliance with the overall migration limit shall be carried out in food simulants as set out in Annex III in accordance with the rules set out in Chapter 3 of Annex V.";
- (b) Paragraph 7 is replaced by the following:
- "7. Before comparing specific and overall migration test results with the migration limits the correction factors set out in point 3 of Annex III and Chapter 4 of Annex V shall be applied in accordance with the rules set out therein."
- (7) Annexes I, II, III, IV and V are amended in accordance with the Annex to this Regulation.

#### *Article 2*

Plastic materials and articles complying with Regulation (EU) No 10/2011 as applicable before the entry into force of this Regulation, may be placed on the market until [*enter date 12 months after the date of entry into force of this Regulation*] and may remain on the market until exhaustion of stocks.

#### *Article 3*

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

The provisions on the specific migration limits for aluminium and for zinc set out in point 2(a) of the Annex and the assignments of food simulants in point 3(c) of the Annex shall apply from [*enter date 24 months after the date of entry into force of this Regulation*]

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

Done at Brussels,

*For the Commission*  
*The President*  
*Jean-Claude JUNCKER*