



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR HEALTH AND FOOD SAFETY

Crisis preparedness in food, animals and plants
Food hygiene and fraud

**CROSS-SECTORIAL WORKING GROUP ON
AN EU ENFORCEMENT ACTION ON
PLASTIC FOOD CONTACT MATERIALS MADE OF BAMBOO POWDER
WEBEX MEETING - 6 MAY 2021
MINUTES**

Attendees:

Experts from working groups on: Food contact materials, Agri-Food Fraud, E-commerce, and Import of food and feed of non-animal origin

Commission: DG SANTE, DG JUST, DG TAXUD, OLAF

1. Presentation of the action plan by DG SANTE

A number of member states have launched specific actions on the use of bamboo powder, an unauthorised component, in plastic food contact materials.¹ Apart from the fact that it is not authorised, the use of this bamboo powder represents a safety risk as the migration limits of certain toxic substances (melamine and formaldehyde) is often exceeded, in addition for products that are frequently designed and thus used for infants and children.

In the last two years, Member States created 65 RASFF notifications and 14 non-compliances notifications on such products. An EU action is needed as all products were imported from non-EU countries, a third detected at the border, the rest on the market, making it more difficult for competent authorities to act.

Those illegal products are also falsely advertised to consumers as eco-friendly while they are not recyclable, compostable or sustainable. As this environmental aspect falls under national competence, the intended coordinated action does not cover it and Member States were encouraged by the Commission to address it via their relevant authority.

In addition, plastic products have a custom duty of 6.5% and are potentially subject to sanitary checks, while products made of 100% bamboo are not subject to any duty and sanitary controls. Some operators declare or imply that plastic products are made of 100% bamboo in order to circumvent border control and custom duties.

The enforcement action thus aims at rejecting products at borders, recovering evaded duties, reminding operators about the illegality of these products including through the support of online-platforms, and sensitising/informing consumers.

¹ Regulation (EU) No 10/2011 on plastic food contact materials defines that ‘*plastic*’ means polymer to which additives or other substances may have been added...’. It requires that plastic is manufactured only from authorised starting substances (monomers) and additives. The Regulation lists about 900 such substances, but not bamboo. The use of bamboo if added to a polymer such as a formaldehyde melamine resin meets the definition of additive that the Regulation provides. Authorisation would include an evaluation of its safety by the European Food Safety Authority (EFSA).

The Commission will give legal and technical support, facilitate the cooperation with customs or provide e-platforms' contacts. Different services will be involved. TAXUD will notably introduce a risk profiling on these products to draw custom authorities' attention and get their support. SANTE E-Commerce network will support food contact material specialists for online searches.

Member States will report findings in iRASFF, AFIS (OLAF system), and CSRM (Custom Risk Management System, findings of the Ecommerce Network shall be reported to the regarding Functional Mailbox.

The action launched on 6 May 2021 is due to end in December 2021.

2. Presentation of the action launched by Hungary

Hungary initiated an action on the subject in January 2021 and shared its experience with other Member States. After a comprehensive online monitoring, actions against non-compliant websites will now start in Hungary. The structured template developed by Hungary for the reporting of ecommerce sales of illegal plastic tableware made with bamboo powder or other unauthorised additives appeared very useful to other delegations and will be shared with them. A press release caught consumers' attention who asked for authorities' recommendations. Answers to frequently asked questions were published on their website.

3. DISCUSSION and conclusion

Member States welcome the initiative of the Commission and showed their willingness to participate though some indicated the need to agree/coordinate their position at home. DG SANTE indicated that the action is officially launched from now on, and Member States can already report their findings in RASFF. A functional mailbox is created and dedicated to the action for any clarification/questions authorities may have.

Several practical questions were raised during the discussion such as

- The scope of the action. The EU action targets the illegal use of bamboo powder used in plastic food contact materials to facilitate the cooperation with customs. Nevertheless, member states remain free to extend it to any use of unauthorised additives in plastic food contact materials, which is illegal.
- The fact that Regulation 284/2011 only covers melamine formaldehyde kitchenware originating in or consigned from China and Hong Kong. It was explained that the action is taken mainly based on Regulation (EU) No 10/2011, because bamboo is not listed. However, it was explained that further non-compliances could be observed such as exceedance of migration limits for melamine and formaldehyde, and regarding requirements set out in Regulation (EU) No 284/2011 in case of melamine formaldehyde bamboo mixtures originating from China and Hong Kong
- There is also a difficulty with the interpretation of the CN code referred to under Regulation (EU) No 284/2011. In the FCM domain, tableware is generally regarded as subcategory of kitchenware; however, CN codes may apply it as different categories. This difference caused a loophole under Regulation (EU) No 284/2011, as the joint reading of the applicable code with the Regulation may appear not to apply to tableware. Plastic material containing bamboo are often tableware. It is therefore important to avoid such misinterpretations in the future and under this action.

- the need for customs to have a risk profile available. Such a custom risk profile will be circulated in the next weeks (after DG TAXUD validation) so to set the scope of controls at borders.
- how would the recovery of duties circumvented by operators be carried out. This remains the competence of custom services and can go back over the past three years.

The Commission insisted on the importance of the reporting to relay relevant information to customs authorities about the companies involved. In practice, “Information notifications” (and not “news” as indicated during the meeting) are expected in RASFF, even when no analytical tests are performed. The notification shall clearly make reference to the Bamboo action to easily identify them. This will facilitate also the reporting to third countries. The Commission will produce Questions and Answers to guide and explain the action, which will be circulated to Member States and published on a dedicated webpage.